

RESOLUTION NO. 2020-105

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, RATIFYING A SUB-RECIPIENT GRANT AGREEMENT BETWEEN CITRUS HEALTH NETWORK, INC. AND THE CITY OF HIALEAH, FLORIDA, A COPY OF WHICH IS ATTACHED AND MADE A PART HEREOF AS EXHIBIT "1", AS PART OF A MULTI-AGENCY PARTNERSHIP, TO PROVIDE HOMELESS ASSISTANCE ACTIVITIES IN HIALEAH UNDER THE CITY'S ESTABLISHED EMERGENCY SOLUTIONS STRATEGIES INCLUDING WITHOUT LIMITATION, HOMELESSNESS PREVENTION, RAPID RE-HOUSING, EMERGENCY SHELTER, AND OUTREACH, IN THE TOTAL AMOUNT OF \$2,698,307 OF EMERGENCY SOLUTIONS GRANT COVID-19 (ESG-CV) FUNDS, FOR A TERM COMMENCING ON AUGUST 1, 2020 THROUGH JULY 31, 2021, WITH THE OPTION TO EXTEND FOR UP TO ONE (1) YEAR; FURTHER AUTHORIZING THE MAYOR OR HIS DESIGNEE ON BEHALF OF THE CITY TO EXECUTE ALL OTHER NECESSARY DOCUMENTS IN FURTHERANCE THEREOF; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the President of the United States of America declared a national emergency on March 13, 2020, in response to the Coronavirus (COVID-19) pandemic; and

WHEREAS, the Governor of the State of Florida signed Executive Order 20-52 on March 9, 2020, declaring a state of emergency for Florida, in response to the Coronavirus (COVID-19) pandemic; and

WHEREAS, the Mayor of Miami-Dade County signed and declared a local state of emergency in Miami-Dade County on March 9, 2020, in response to the Coronavirus (COVID-19) pandemic; and

WHEREAS, the Mayor of the City of Hialeah signed and declared an Emergency Order declaring a local state of emergency in the City of Hialeah on March 16, 2020; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law by the President of the United States of America on March 27, 2020; and

WHEREAS, the Mayor and City Council approved Resolution 2020-086 on July 14, 2020, approving the acceptance and use of a grant award from the U.S. Department of Housing and Urban Development (HUD), pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, in the amount of \$2,698,307 of Emergency Solutions Grant COVID-19 (ESG-CV) funds for rental assistance; and

WHEREAS, the City of Hialeah is constantly searching for available resources to support Hialeah residents in need of homelessness prevention, rapid re-housing, emergency shelter, or other related forms of assistance; and

WHEREAS, Citrus Health Network, Inc. is the lead agency in the Housing Assistance Network of Dade (HAND) Program, a multi-agency partnership with Miami-Dade County and local municipalities making an effort to prevent homelessness by providing temporary rental assistance for eligible low-income individuals and families who are currently homeless or are at risk of becoming homeless, and providing expanded assistance to residents affected by the economic crisis due to COVID-19; and

WHEREAS, Miami-Dade County has awarded Emergency Solutions Grant COVID-19 (ESG-CV) funds to Citrus Health Network, Inc. in the amount of \$3,399,714 for eligible homeless assistance services, and City of Miami has awarded ESG-CV funds to Citrus Health Network, Inc. in the amount of \$765,000 for eligible homeless assistance services, leveraging their funding and resources to expand HAND program assistance; and

WHEREAS, Citrus Health Network has been an annual sub-recipient of ESG funding from the City of Hialeah for over 10 years, with their headquarters located in Hialeah, readily available to and serving Hialeah residents in need each year in accordance with federal regulations applicable to the ESG program; and

WHEREAS, the City of Hialeah finds it is in the best interest of the health, safety, and wellbeing of its residents to use ESG-CV funding to provide financial assistance to individuals and families in Hialeah at risk of losing their homes and becoming homeless or who are already experiencing homelessness.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

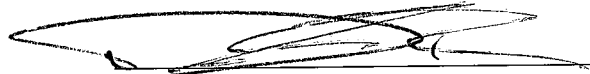
Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby incorporated and adopted by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby ratifies the Sub-Recipient Grant Agreement between Citrus Health Network, Inc. and the City of Hialeah, Florida, a copy of which is attached and made a part hereof as Exhibit "1", as part of a multi-agency partnership, to provide homeless assistance activities in Hialeah under the City's established emergency solutions strategies including without limitation, homelessness prevention, rapid re-housing, emergency shelter, and outreach, in the total amount of \$2,698,307.00 of Emergency Solutions Grant COVID-19 (ESG-

CV) funds, for a term commencing on August 1, 2020 through July 31, 2021, with the option to extend for up to one (1) year, further authorizing the Mayor or his designee on behalf of the City to execute all other necessary documents in furtherance thereof. All action taken to date by officers of the City in furtherance of this Agreement is hereby approved, confirmed, and ratified.

Section 3: This resolution shall become effective when approved by majority vote of the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

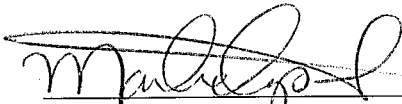
PASSED AND ADOPTED this 11 day of August, 2020.



Oscar De La Rosa
Council Vice-President

Attest:

Approved on this 25 day of August, 2020.

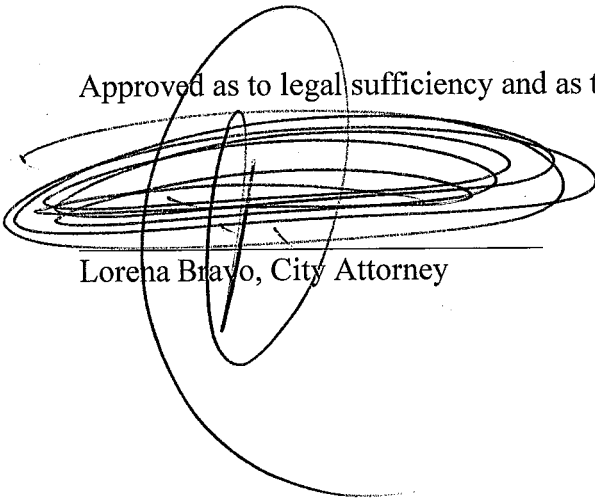


Marbelys Fatjo, City Clerk



Mayor Carlos Hernandez

Approved as to legal sufficiency and as to form



Lorena Bravo, City Attorney

Resolution was adopted by 6-0-1 vote with Councilmembers, Cue-Fuente, De la Rosa, Garcia-Roves, Perez, Tundidor, and Zogby, voting "Yes" and with Council President Hernandez absent.

**AGREEMENT BETWEEN THE CITY OF HIALEAH
AND CITRUS HEALTH NETWORK, INC.**

THIS AGREEMENT, entered into this ___ day of **August, 2020**, by and between the **CITY OF HIALEAH**, a Florida municipal corporation, having its principal office at **501 Palm Avenue, Hialeah, Florida, 33010**, hereinafter referred to as the "City," and **CITRUS HEALTH NETWORK, INC.**, a not-for-profit Florida corporation with offices located at **4175 West 20th Avenue, Hialeah, Florida, 33012**, hereinafter referred to as the "Subrecipient."

FUNDING SOURCE: EMERGENCY SOLUTIONS GRANT COVID-19 2 (ESG-CV2)
AMOUNT: \$ 2,698,307.00

WHEREAS, the City of Hialeah has entered into an Agreement with the U.S. Department of Housing and Urban Development (HUD) for the purpose of implementing an Emergency Solutions Grant COVID-19 (ESG-CV) Program with federal assistance under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) enacted on March 27, 2020, as Public Law 116-136, to respond to the growing effects of COVID-19; and

WHEREAS, U.S. HUD has issued and granted Community Planning and Development (CPD) Grant Program regulatory waivers, to waive certain requirements under the Emergency Solutions Grant (ESG) Program, attached hereto and made a part hereof as Attachment IV; and

WHEREAS, the Subrecipient represents that it is willing, able, and competent to perform the services required to operate the program, as described in the Scope of Services; and

WHEREAS, the Subrecipient certifies that it possesses the legal authority to enter into this Agreement by way of a resolution, motion, or similar action that has been duly adopted or passed as an official act of the board of directors of the Subrecipient, authorizing the execution of the Agreement, including all understandings and assurances contained herein, and authorizing the person identified as the official representative of the Subrecipient to act in connection with this Agreement and to provide such additional information as may be required; and

WHEREAS, the City desires to engage the Subrecipient to render certain services in connection therewith.

NOW, THEREFORE, in consideration of the above, the parties hereto agree as follows:

ARTICLE I
SCOPE OF SERVICES

The Subrecipient hereby agrees to provide a program as described in the Scope of Work and Budget attached hereto and made a part hereof as Attachments I and II, respectively.

ARTICLE II
CONDITION OF SERVICES

The Subrecipient agrees to the following:

- A. The Subrecipient shall carry out this program with federal assistance under Subtitle B of the Title IV of the McKinney – Vento Homeless Assistance Act, 42 USC 11371 et seq., and regulations promulgated thereunder and codified at 24 CFR 91 that pertain to this

- grant, and at 24 CFR Part 576 and any amendments thereto, the provisions of the CARES Act, Public Law 116-36, and any waivers granted by HUD or requested and received by the City.
- B. The Subrecipient shall document its performance by maintaining records and files, which provide the following information.
1. Client profiles identifying household income, head of household, ethnicity, race and gender; and
 2. An outreach plan which insures equitable participation by all eligible Hialeah residents.
- C. The Subrecipient shall maintain a citizen participation mechanism, which will include, but not be limited to the following:
1. A recordkeeping system identifying (name, telephone number, and nature) citizen complaints and inquiries.
 2. Logging of citizen comments or complaints when received
 3. Copies of comments and/or complaints received in writing
 4. Responses to complaints and/or resolutions
- D. The Subrecipient shall abide by the Federal requirements of 24 CFR 570.600-612, Subpart K, Other Program Requirements, 2 CFR Part 200, and 24 CFR Part 84, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally-Recognized Indian Tribal Governments, as applicable.
- E. The Subrecipient agrees that to the greatest extent feasible opportunities for training and employment be given to low and moderate-income persons residing in the City of Hialeah, particularly minority group members.

ARTICLE III

TERM OF AGREEMENT

This Agreement shall be deemed effective upon approval and release of funds by the United States Department of Housing and Urban Development and upon execution of this Agreement by both parties, whichever is later. The term of this Agreement shall cover the period of **August 1, 2020 through July 31, 2021**.

ARTICLE IV

TERMINATION

The Subrecipient may terminate this Agreement without cause, by written notice to the City of such intent to be terminated at least ninety (90) days prior to the effective date of such termination. The City retains the right to terminate this Agreement without cause, at any time prior to the completion of the services required without penalty to the City. In that event, notice of termination of this Agreement shall be in writing to the Subrecipient who shall be paid for those services performed prior to the date of its receipt of notice of termination. In no case, however, will the City pay the Subrecipient an amount in excess of the total sum provided by this Agreement.

It is hereby understood by and between the City and the Subrecipient that any payment made in accordance with this section to the Subrecipient shall be made only if the Subrecipient is not in default under the terms of this Agreement. If the Subrecipient is in default, then the City shall in no way be obligated and shall not pay the Subrecipient any sum whatsoever.

If the Subrecipient defaults on any existing or future agreement with the City for any other federal, state, or local grant during the Agreement Period, the Subrecipient shall be considered in default of this Agreement, and the City reserves the right to suspend payment or terminate this Agreement.

The City may suspend or terminate payment of this project, in whole or in part, for cause. Cause shall include the following:

- A. Failure to comply and/or perform in accordance with this Agreement;
- B. Submission to the City of reports which are incorrect or incomplete in any material respect;
- C. If for any reason the implementation of this Agreement is rendered impossible or unfeasible;
- D. Filing of a voluntary petition in bankruptcy or reorganization, or making any assignment for the benefit of creditors, or seeking any similar relief under any present or future statute, law or regulation relating to relief of debtors;
- E. Adjudicated bankrupt or have any involuntary petition in bankruptcy filed against it; and

The City shall notify the Subrecipient, in writing, when payments are being withheld for cause. Such notification shall specify a reasonable date for compliance, which shall be no less than thirty (30) days from the notification date, and specify the corrective action to be taken by the Subrecipient.

It is further understood that if regulatory constraints are placed on the funds by the Department of Housing and Urban Development which impede the progress or advancement of the project, or if the funds are curtailed, this Agreement will terminate upon such notification as set forth herein.

The City shall notify the Subrecipient in writing when cause is found for termination of the Agreement. Upon termination of the Agreement, the Subrecipient and the City shall meet to determine if any amounts are to be repaid to the City or if additional amounts are due to the Subrecipient. In the event of such determination, the City may pursue all legal or equitable remedies to enforce its rights arising out of or in connection with the Agreement.

ARTICLE V **MODIFICATIONS**

Any alterations, variations, modifications, or waiver of this Agreement shall only be valid when they have been provided in writing and duly signed by both parties. Any changes which do not substantially change the scope of the project and/or the project implementation schedule or increase the total amount payable under this Agreement shall be valid only when provided in writing and signed by the City and the Subrecipient

ARTICLE VI **METHOD OF PAYMENT**

Upon execution of this Agreement, the City shall make payments to the Subrecipient based on reimbursement for services already performed or costs incurred according to the budget in Attachment II. The Subrecipient shall furnish accurate and complete documentation of actual expenditures to the City prior to reimbursement. There is no match required for the ESG-CV award.

In order to receive reimbursement for costs of salaries, the HUD-mandated timesheet attached to this Agreement as Attachment III must be completed and provided to the City to furnish sufficient documentation of the daily hours worked and to be reimbursed for with ESG-CV

funds. This portion of the reimbursement will not be processed unless this timesheet is submitted as documentation to the Department of Grants and Human Services for review, approval, and processing. Salary reimbursements shall only be approved for documented hours worked toward eligible ESG-CV activities.

ARTICLE VII

CONFLICT OF INTEREST

The conflict of interest provisions of this section apply to any person who is an employee, agent, consultant, officer/elected official, or appointed official of the Subrecipient.

Subrecipient covenants that none of the above-described people, if they exercise or have exercised any functions or responsibilities under this Grant or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, subcontract, or benefit from an ESG-CV-assisted activity or have a financial interest in any contract, subcontract, or agreement with respect to an ESG-CV-assisted activity or the proceeds of an ESG-CV-assisted activity either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

Any such interest on the part of the Subrecipient or its employees shall be disclosed in writing to the City immediately upon discovery. The Subrecipient agrees to abide and be governed by the conflict of interest requirements by the United States Department of Housing and Urban Development, the State, the County, and the City, which is incorporated herein. The Subrecipient is aware of the conflict of interest laws of the City, particularly Hialeah Code Chapter 26, Article I and II, and Miami-Dade County, Florida, particularly, Miami-Dade County §2-11.1 et seq., the State of Florida, Chapter 112, Part III, Florida Statutes, 24 CFR Part §576.404 and 24 CFR §92.356, United States Department of Housing and Urban Development, and agrees that it shall fully comply with such provisions. Attached hereto and made a part hereof as Attachment V is a copy of the aforesaid laws.

Subrecipient covenants that no person who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement have any personal financial interests, direct or indirect, with the Subrecipient. Subrecipient further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed by the Subrecipient.

Subrecipient warrants that it has not employed or retained any person employed by City to solicit or secure this Agreement and that it has not paid, offered to pay, nor agreed to pay any person employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

ARTICLE VIII

INDEMNIFICATION

A. Tort Liability. Subrecipient agrees to indemnify, defend, save, and hold the City, its employees, directors, officers, agents, independent contractors (other than the Subrecipient), successors and assigns (the "Released Parties") harmless against any and all liabilities, losses, costs, and expenses (including, without limitation, any and all attorney's fees, court costs and expenses through trial and/or administrative hearing and on appeal) arising from or in any way resulting from any negligent acts or omissions of Subrecipient, or any of Subrecipient's agents, invitees, licensees, representatives, successors, or assigns, except where the liability loss, cost, or expense is as a result of the negligent conduct of any of the Released Parties.

In regard to any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees), and liabilities which arise from the joint or concurrent negligence of the City and the Subrecipient, each party shall assume responsibility in proportion to the degree of its respective fault. Nothing in this paragraph shall be interpreted as a waiver of sovereign immunity greater than provided by Florida Statute 768.28, as amended, from time to time, by the City.

B. Contract Liability. Subrecipient agrees to indemnify, defend, save, and hold the Released Parties harmless against any and all liabilities, losses, costs or expenses (including, without limitation, any and all attorney's fees, court costs and expenses through trial and/or administrative hearing and on appeal) arising from or in connection with this the performance or non-performance of, default or breach of this Agreement by any of the Released Parties.

ARTICLE IX

QUARTERLY REPORTS

A. The quarterly reports are due to be received by the City Department of Grants and Human Services no later than **seven (7) calendar days after each quarter has ended**. Quarterly reports include, but are not limited to, the following information:

1. Client profile form
2. Narrative report form, as applicable; and
3. Special reports which are required, as necessary.

Whenever reports, forms, or other data are required of the Subrecipient herein, fifteen (15) calendar days' prior notice in writing of such shall be provided whenever possible. The reporting periods for the quarterly reports are as follows:

- I. August – October
- II. November – January
- III. February - April
- IV. May – July

Timeline for end of each quarter and due dates for each corresponding report will be as follows for the present program year: **ESG-CV – FY 2020**:

Due Date	ESG-CV TIMELINE FOR PY 2020-2021
October 31 st , 2020	End of 1 st Quarter
November 7 th , 2020	1 st Quarterly Performance Report due
January 31 st , 2021	End of 2 nd Quarter
February 7 th , 2021	2 nd Quarterly Performance Report due
April 30 th , 2021	End of 3 rd Quarter
May 7 th , 2021	3 rd Quarterly Performance Report due
July 31 st , 2021	End of Final Quarter
August 7 th , 2021	Final Performance Report due Financial Closeout due

- B. Final evaluation and the reports for the final month of the Agreement shall contain a final evaluation that includes the cumulative totals, statistical findings (e.g. money spent to render actual services to each client), and the effectiveness of the program. The final evaluation report is due seven (7) calendar days after expiration to the Agreement. These reports/evaluations must be received on or before the respective due dates.
- C. Other reporting requirements may be required by the City in the event of program changes and/or legislative amendments. The Subrecipient shall be informed, in writing, if any changes become necessary.

ARTICLE X

AUDIT AND INSPECTIONS

At any time during normal business hours, and as often as the City Administration and/or the Comptroller of the United States may deem necessary, there shall be made available to the City Administration and/or representatives of the Comptroller to audit, examine, and make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement. The Subrecipient shall allow access to all financial records during normal business hours to authorized Federal, State, or City representatives and agrees to provide such assistance as may be necessary to facilitate financial audit by any of these representatives when deemed necessary to insure compliance with applicable accounting and financial standards.

It is further understood that all records and supporting documents pertaining to this Agreement shall be kept for a minimum period of four (4) years from the date of expiration of this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the four-year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the four-year period, whichever is later. During the course of an audit, if the City determines that any payments made to the Subrecipient do not constitute an allowable expenditure, then the City will have the right to deduct or reduce those amounts from the related invoices. The Subrecipient must maintain records necessary to document compliance with the provisions of the Agreement.

In addition, the Subrecipient agrees to submit an independent audit report in accordance with OMB Circular A-133 Audit of Institutions of Higher Learning and Other Non-profit Institutions, as revised and/or supplemented, no later than 90 days, at the end of the Subrecipient fiscal year. In addition, the Subrecipient must submit copies of letters of non-compliance issued by the auditors as they pertain to the Grant.

ARTICLE XI

COMPLIANCE WITH LOCAL STATE AND FEDERAL REGULATIONS

The Subrecipient also agrees to comply with all other applicable Federal, State, and Local laws, regulations, and policies governing the funds provided under this Agreement. The Subrecipient further agrees to utilize funds available under this Agreement to supplement, rather than supplant, funds otherwise available.

ARTICLE XII

ADDITIONAL CONDITIONS AND COMPENSATION

It is expressly understood and agreed by the parties hereto that monies contemplated by this Agreement are provided through a grant of Federal ESG-CV funds and are contingent upon approval of activities by HUD. To the extent that the Subrecipient suffers loss or incurs any cost or expense as a result of HUD delay in approval, failure to approve, or disapproval of any

activity contemplated to be funded through the grant as provided in this Agreement, Subrecipient shall bear all risk of loss, cost, or expense and indemnify and hold the City harmless, pursuant to Article VIII.

ARTICLE XIII **REVERSION OF ASSETS**

Upon termination of this Agreement, the remainder of unused or unencumbered funds received under this Agreement as well as capital assets acquired under this Agreement shall be returned to the City.

ARTICLE XIV **PROGRAM INCOME**

Any program income received shall be prorated to the percentage of the City's participation and shall be used for eligible activities under the program. For those activities undertaken with program income, all of the provisions of this Agreement shall apply. It is further understood that upon expiration or termination of this Agreement, the Subrecipient shall transfer to the City any and all funds on hand under the program and any and all accounts receivable attributable to the use of these funds.

The Subrecipient shall submit quarterly reports on the program income received and provide proper documentation of the disbursement of these funds.

ARTICLE XV **LEAD-BASED PAINT DISCLOSURE**

The Subrecipient agrees to provide lead-based paint disclosure pamphlets to all program participants residing in housing built before 1978 as prescribed by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §4851-4856), and the lead-based paint remediation and disclosure regulations codified 24 CFR §576.403.

ARTICLE XVI **CIVIL RIGHTS**

The Subrecipient agrees to abide and be governed by Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000 D & E) and Title VIII of the Civil Rights Act of 1968, as amended, which provide in part that there will not be discrimination of race, color, sex, religion, or national origin in performance of this Agreement, in regard to persons served, or in regard to employees or applicants for employment.

The Subrecipient also agrees to abide and be governed by the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq. which provides, in pertinent part, that there shall be no discrimination against persons in any area of employment because of age.

The Subrecipient agrees to abide and be governed by Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C § 794 and Title III of the American with Disabilities Act, Public Law 101-336, which prohibits discrimination on the basis of disability.

It is expressly understood that upon receipt of evidence of such discrimination, the City shall have the right to terminate the Agreement.

ARTICLE XVII
NOTICES

It is understood and agreed between the parties hereto that all notices which may arise in connection with this Agreement shall be considered sufficient when made in writing and mailed or delivered to Party at the appropriate address appearing on Page 1 of this Agreement or such other address as may be designated in writing upon the relocation of the Subrecipient or change in principal place of business.

ARTICLE XVIII
SUBCONTRACTS

The Subrecipient agrees that no assignment or subcontract will be made or let in connection with this Agreement without the prior written approval of the City and that all such subcontractors or assignees shall be governed by the terms and intent of this Agreement.

ARTICLE XIX
PERFORMANCE REVIEW

The City may conduct a formal quarterly review of the Subrecipient's compliance with the terms of this Agreement. A report of their findings will be made available to the Subrecipient within thirty (30) calendar days of the completion of such review.

ARTICLE XX
PATENT AND COPYRIGHTS

The Subrecipient agrees that the United States Department of Housing and Urban Development and the City retain patent rights and copyrights on any project which involves research, developmental, experimental, or demonstrative work.

ARTICLE XXI
PROGRAM PUBLICITY

The Subrecipient agrees that any news release or other type of publicity pertaining to the project as stated herein must recognize the City as the recipient funded by the United States Department of Housing and Urban Development and the entity which provided funds for the program.

ARTICLE XXII
CONDITIONS FOR FAITH BASED ORGANIZATIONS

The Subrecipient agrees that ESG-CV funds may be used by religious or faith-based organizations. 24 CFR § 576.406 specifies the limitations on ESG-CV funds and is incorporated by reference herein.

ARTICLE XXIII
DRUG/ALCOHOL

The Subrecipient agrees to administer in good faith a policy to ensure that its employees and the assisted program is free from illegal use, possession, or distribution of drugs or alcohol by its beneficiaries in accordance with the Drug-Free Work Place of 1988 (421 U.S.C. § 701) and 24 CFR Part 24 Subpart F, of HUD.

ARTICLE XXIV
DEBARMENT/SUSPENSION

The Subrecipient agrees to abide by and comply with the requirements of 24 CFR Part 24, regarding debarment and suspension, which provides that neither the Subrecipient nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this covered transaction or in any proposal submitted in connection with the lower tier transactions.

The Subrecipient agrees to maintain an active entity registration through the United States System for Award Management (SAM) in order to remain eligible to receive ESG-CV funds throughout the term of this Agreement.

ARTICLE XXV
MISCELLANEOUS PROVISIONS

A. No Waiver. The failure of the City to insist on the performance or observance by Subrecipient of any one or more conditions or covenants of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such covenants or conditions, and Subrecipient's obligation with respect to such future performance shall continue in full force and effect.

B. Gender. The terms City and Subrecipient, as herein contained, shall include the singular and/or the plural, the masculine, the feminine, and/or the neuter, the heirs, successors, executors, administrators, personal representatives and/or assigns, wherever and whenever the context so requires or admits.

C. Captions. The captions of the various paragraphs of this Agreement have been inserted for the purposes of convenience only. Such captions are not a part of this Agreement and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this Agreement.

D. Counterparts. This Agreement may be executed in several counterparts; all of which shall constitute one of the same Agreement between City and Subrecipient.

E. Severability. If any covenant or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such covenant or provision to persons or circumstances (other than those as to which it is held invalid or unenforceable) shall not be affected thereby, and each and every other such covenant and provision of this Agreement or portion thereof shall be valid and be enforced to the fullest extent permitted by law.

F. Benefits: Binding Effect. This Agreement shall be binding upon and inured to the benefit of the successors of the City and Subrecipient and the assigns of the City and permitted assigns of Subrecipient, and shall be construed and enforced in accordance with the laws of the State of Florida. Venue for any litigation which may arise in connection with this Agreement shall be in Miami-Dade County, Florida. The Subrecipient agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida, and to be amenable to process.

G. Further Assurances. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents by their respective proper officers duly authorized thereunto, the day and year first above written.

CITRUS HEALTH NETWORK, INC.
4175 West 20th Avenue
Hialeah, Florida 33012

Authorized signature on behalf of
Citrus Health Network, Inc.

CITY OF HIALEAH, FLORIDA
501 Palm Avenue
P.O. Box 110040
Hialeah, Florida 33011-0040

Authorized signature on behalf of
City of Hialeah

Mario E. Jardon, LCSW
President and CEO

Date

Annette Quintana, Director
Dept. of Grants and Human Services

Date

Attachment I

Scope of Work

Emergency Solutions Grant Program COVID-19 2 (ESG-CV2)

1. The Housing Assistance Network of Dade (“HAND”) Program is a multi-agency collaboration with the City of Hialeah, Miami-Dade County, and other local municipalities, led by Citrus Health Network. The aim of the program is to prevent homelessness by providing temporary rental assistance for eligible low-income individuals and families who are currently homeless or are at risk of becoming homeless.
2. The HAND Program is funded by the U.S. Dept. of Housing and Urban Development (HUD), U.S. Dept. of Veterans Affairs Supportive Services for Veteran Families (SSVF), the State of Florida, the Miami-Dade Homeless Trust, and the Cities of Hialeah and Miami. Partners participating in the network include: Citrus Health Network, Camillus House, Miami-Dade Community Action and Human Services sites, and various shelter providers.
3. Assistance to participants may include: rent assistance (average of 3 to 6 months), rent in arrears up to 4 months, security and utility deposits, moving and storage expenses, application fees and utility payments. Case management and referrals to other programs is also provided.
4. In order to expand accessibility during the COVID pandemic and to target persons affected by the COVID economic effects, the HAND Program has developed an internet-based on-line application to allow applicants to apply and upload their documents. In addition, eligibility for the program has been expanded to cover very low income persons who lost income due to the pandemic.
5. Changes to program due to COVID:
 - a. Since eviction filings may occur much later in the program year, adding the following eligibility criteria for prevention assistance:
 - i. Has received a three-day notice; or letter from landlord verifying the tenant’s right to housing in the program will be terminated within 21 days; AND
 - ii. has proof of loss of employment since March 1, 2020 (either letter or unemployment benefits).
 - b. Up to 4 months of rent in arrears, plus months going forward.
 - c. Extending the amount of time to “go back” accepting evictions to 120 days (up from 90). This is to address those that received an eviction order before COVID closures and have not had their pending eviction enforced yet.
 - d. Inspections will occur through video or photos in coordination with landlord.
 - e. Case management contacts may occur by phone instead of in person.
 - f. Rents must be under FMR plus 20% and still need to meet reasonableness standard.
 - g. Local caps on utility assistance raised to \$1,000.
 - h. Increasing income caps to 50% AMI for Prevention and 80% AMI for Rapid Re-Housing
 - i. Lease does not need to be for one year.

Scope of Work

Emergency Solutions Grant Program COVID-19 2 (ESG-CV2)

- j. **Legal Services:** Pay for legal assistance to intervene on behalf of tenants in Hialeah eviction court hearings. Explore ways to also work with the courts to pay into the court system.
- k. **Outreach Team:** Provide street outreach and work in coordination with local police to help engage homeless persons on the street and link them to housing.
- l. **Housing Navigator:** Would work with HAND Case Managers and Housing Authority Case Managers to assist their clients in finding affordable units.
- m. **Hotel/Motel:** Use of motel rooms for emergency placements to get a homeless individual or family off the street if housing placement is not immediately available. ESG regulations § 576.102 emergency shelter component allows funds for hotel or motels where no appropriate emergency shelter is available for a homeless family or individual.
- n. **Housing in place:** New model in which Citrus would lease a housing unit, that would then be available to place someone directly from the street or a motel. ESG regulations do not allow funds to be used for furniture, except in emergency shelter.
- o. Persons receiving Rapid Re-Housing assistance would also be possible candidates to received FUP or VASH vouchers through the **Hialeah Housing Authority**

6. SHORT-TERM/MEDIUM-TERM RENTAL ASSISTANCE PROGRAM 24 CFR 576.106

Program Description:

The Short/Medium-Term rental assistance program provides temporary financial assistance services to individuals and families who would be homeless but for this assistance and provides assistance to rapidly re-house persons who are homeless. This assistance will allow residents of Hialeah (families and individuals) to remain in their existing rental units or to help them obtain and remain in rental units they select. Rental assistance may be tenant-based or project-based. Notwithstanding the financial situation of a household, the maximum length of time a program participant may receive rental assistance through ESG is 24 months during any 3-year period, including any payments made towards rental/utility payments in arrears. The application may be completed in person, by phone, or on-line. Payment may be requested by the subgrantee based on financial commitment or reimbursement for payments made.

Types of Assistance —24 CFR 576.105(1)(2)(3)(4)(5)(6)

ESG funds may be used to pay housing owners, utility companies, and other third parties for the following costs:

- i. **Rental Assistance:**
ESG requires housing units to meet Rent reasonableness standard in comparison to other similar units in the area. Can also include rent in arrears.
- ii. **Project Based Rent Assistance (“Housing in Place”)**
- iii. **Rental Application fees**
- iv. **Last Month’s Rent**
- v. **Security and Utility Deposits**

Scope of Work

Emergency Solutions Grant Program COVID-19 2 (ESG-CV2)

- vi. Utility Payments
- vii. Moving Cost Assistance
- viii. Outreach
- ix. Housing Navigation (Housing search and placement)

All payments will be made directly to the vendors.

Criteria for Eligibility

Standard policies and procedures for evaluating individual's and families' eligibility for assistance:

1. Must be a resident of Hialeah;
2. Prevention assistance recipients must have household income at or below 50% of area median income (AMI) as published annually by the US Department of Housing and Urban Development. However, in the event of Rapid-Re-Housing cases only households with a gross income at, or below 80% of the area median income;
3. Case files must include a completed eligibility form and certification (which meets HUD specifications) that the household meets the eligibility criteria;
4. Records must be kept for each program participant that document: the services and assistance provided to that program participant; compliance with requirements under 24 CFR §576.1 01-106, 576.401 (a) and (b), and 576.401 (d) and (e); and, when applicable, compliance with the termination of assistance requirement in § 576.402;
5. A legally binding, **written** lease between tenant and landlord is required to receive ongoing rental assistance;
6. For each individual and family determined ineligible to receive ESG assistance, the record must include documentation of the reason for that determination;
7. Must be homeless or at risk of homelessness according to ESG requirements.

7. HOUSING RELOCATION AND STABILIZATION SERVICES

Program Description:

This program provides for services that assist program participants with housing stability and placement. These services are limited to the following and may only be provided to eligible participants receiving Rental Assistance as highlighted above:

- **Case Management/Service Eligibility**

An initial evaluation is made to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing. Contact can be by phone.

Scope of Work
Emergency Solutions Grant Program COVID-19 2 (ESG-CV2)

Program Performance Standards

The City projects that 50 persons will exit homelessness and another 200 persons will avoid homelessness under the grant. A set of performance standards has been established to ensure that these projections are met. These standards are as follows:

- Monitor the number of households assisted who return to shelters after Homelessness Prevention or Rapid Re-Housing assistance is provided. At least 70% of households will continue to be in stable housing at least 90 days following the period of assistance.

Attachment II

Citrus Health Network Inc.
ESG Hialeah COVID 2 FY 2020

	Time and Effort	Annual	Hialeah ESG
Housing Stabilization: Rapid Re-housing			
Services Coordinator (1 FTE)	30%	\$ 55,000.00	16,500
Accounting Clerk (0.5 FTE)	30%	\$ 22,500.00	6,750
Service Eligibility Clerk (1 FTE)	100%	\$ 32,000.00	32,000
Fringe Benefits @ 19.50%			10,774
Housing Stabilization Total			66,024
Tenant-Based Rental Assistance: Rent, utilities, deposits, inspections, rent surveys			
			622,823
Project-Based Rental Assistance: rent, utilities, deposits, inspections, for project based assistance. Up to 30 days may be to hold unit. Two units at a time projected.			
	2	14400	28,800
Indirect Cost Federally Approved Rate			
22.72%			12,553
Total Rapid Re-housing			701,400
Housing Stabilization: Homeless Prevention			
Services Coordinator 1 FTE	70%	\$ 55,000.00	38,500
Accounting Clerk (0.5 FTE)	70%	\$ 22,500.00	15,750
Fringe Benefits @ 19.50%			10,579
Housing Stabilization Total			49,079
Legal Services Subcontract			
			30,000
<i>(\$1,000 per household assisted est at 30)</i>			
Tenant-Based Rental Assistance: Rent, utilities, deposits, inspections, rent surveys			
			1,700,000
Indirect Cost Federally Approved Rate			
22.72%			12,326
Total Homeless Prevention			1,791,404
Emergency Shelter/Outreach			
Emergency Shelter (Hotel/motel)	(\$100 x 300 nights)		30,000
Street Outreach/Navigator	2.0 FTE	\$ 40,000.00	80,000
Fringe Benefits at 19.50%			15,600
Transportation: gasoline, car maintenance, mileage reimbursement			7,200
Indirect Cost Federally Approved Rate			
22.72%			18,176
Total Emergency Shelter/Outreach:			143,776
HMIS Clerk			
	FTE	\$ 38,000	38,000
Fringe Benefits at 19.50%			7,410
IT related costs (tech assistance, space and equip pro rated)			6,000
			51,410
Indirect Cost Federally Approved Rate			
22.72%			10,317
Total HMIS			61,727
Subtotal:			
			2,698,307
Total Match			
			n/a

Attachment III



Grants and Human Services
Subrecipient Hourly Time Log

Employee/Owner Name:		Month:	
Program Name:		Year:	

Date	Time In	Time Out	Time In	Time Out	Regular Hrs	Overtime Hrs	Hrs on Other Grants Related to this Program
1							
3							
5							
7							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
Total Hours					0.0	0.0	0.0

Justification of Invoiced Amount:

--

I agree under penalty of law that the information provided above is true and correct, and I understand that the funds being requested are federal funds and any improper use of these funds can result in criminal and/or civil penalties.

EMPLOYEE/
OWNER:

SIGNATURE

SUPERVISOR:

SIGNATURE

PRINT NAME

DATE

PRINT NAME

DATE

Attachment IV



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

March 31, 2020

MEMORADUM FOR: All Community Planning and Development Field Office Directors,
Deputy Directors and Program Managers

FROM: John Gibbs, Assistant Secretary, Acting, D

SUBJECT: Availability of Waivers of Community Planning and Development
(CPD) Grant Program and Consolidated Plan Requirements to
Prevent the Spread of COVID-19 and Mitigate Economic Impacts
Caused by COVID-19

PURPOSE

This memorandum explains the availability of waivers of certain regulatory requirements associated with several CPD grant programs to prevent the spread of COVID-19 and to facilitate assistance to eligible communities and households economically impacted by COVID-19. This memorandum covers waivers of consolidated plan requirements for all CPD formula programs and program-specific waivers for the following CPD programs:

- Housing Opportunities for Persons with AIDS (HOPWA);
- Emergency Solutions Grant (ESG); and
- Continuum of Care (CoC).

This memorandum also announces a simplified notification process for recipients of these programs to use this waiver flexibility to expedite the delivery of assistance. CPD Field Office Directors, Deputy Directors, and Program Managers are instructed to inform CPD recipients operating within their jurisdictions of the content of this memorandum.

NOTIFICATION PROCESS

Recipients may use the waivers described in this memorandum to assist affected CPD program beneficiaries and CPD program eligible households to prevent the spread of COVID-19 and to mitigate against the economic impact caused by COVID-19 for eligible households. To use the waiver flexibility provided in this memorandum, the recipient must provide notification in writing, either through mail or e-mail, to the CPD Director of the HUD Field Office serving its jurisdiction no fewer than two days before the recipient anticipates using the waiver flexibility. Further directions on notifying HUD can be found in Attachment #1.

WAIVER AUTHORITY

In December 2019, a new coronavirus known as SARS-CoV-2 was first detected in Wuhan,

Hubei Province, People's Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has now spread globally. The first case was reported in the United States in January 2020. In March 2020, the World Health Organization declared the coronavirus outbreak a pandemic and President Trump declared the outbreak a national emergency. During this time, the majority of states have declared states of emergency with most shutting down large gathering places and limiting the movement of their residents. As a consequence, many CPD recipients are facing challenges in ensuring appropriate shelter options are available for program participants who need to be separated from others because they are exhibiting symptoms, training staff on how to safely work with program participants and prevent spreading the virus, obtaining supplies to prevent the spread of the virus, and maintaining necessary staffing levels during the outbreak. Further, many program participants are suffering economic consequences from the mass shutdown of businesses and lack of availability of traditional mainstream benefits. A number of recipients have inquired about the availability of waivers of various CPD program requirements to facilitate assistance to program participants and prevent the spread of the virus.

In accordance with 24 CFR 5.110, HUD may, upon a determination of good cause and subject to statutory limitations, waive regulatory provisions. Additional regulatory waiver authority is provided in 24 CFR 91.600. These regulatory provisions provide HUD the authority to make waiver determinations for the ESG, CoC, and HOPWA Programs and consolidated planning requirements for all CPD formula programs.

WAIVER AVAILABILITY

To provide additional flexibility to communities to prevent the spread of COVID-19 and better assist individuals and families, including those experiencing homelessness, infected with the virus or economically impacted by the virus, I hereby find good cause to provide the regulatory waivers below. To use each waiver, each recipient must follow the notification process described above and update its program records to include written documentation of the specific conditions that justify the recipient's use of the waiver, consistent with the justifications and applicability provisions below. Provisions that are not specifically waived remain in full effect.

CONTINUUM OF CARE PROGRAM

1. Fair Market Rent for Individual Units and Leasing Costs

Requirement:	Rent payments for individual units with leasing dollars may not exceed Fair Market Rent (FMR).
Citation:	24 CFR 578.49(b)(2)
Explanation:	The CoC Program regulation at 24 CFR 578.49(b)(2) prohibits a recipient from using grant funds for leasing to pay above FMR when leasing individual units, even if the rent is reasonable when compared to other similar, unassisted units.
Justification:	Waiving the limit on using grant leasing funds to pay above FMR for

individual units above FMR, but not greater than the reasonable rent, will assist recipients in locating additional units to house individuals and families experiencing homelessness and reduce the spread and harm of COVID-19.

Applicability: The FMR restriction is waived for any lease executed by a recipient or subrecipient to provide transitional or permanent supportive housing during the 6-month period beginning on the date of this memorandum. The affected recipient or subrecipient must still ensure that rents paid for individual units that are leased with CoC Program leasing dollars meet the rent reasonableness standard in 24 CFR 578.49(b)(2).

2. Disability Documentation for Permanent Supportive Housing (PSH)

Requirement: A recipient providing PSH must serve individuals and families in which one member of the household has a qualifying disability (for dedicated projects and DedicatedPlus projects that individual must be the head of household). Further, the recipient must document a qualifying disability of one of the household members. When documentation of disability is the intake worker's observation, the regulation requires the recipient to obtain additional confirming evidence within 45 days.

Citation: 24 CFR 578.103(a) and 24 CFR 578.103(a)(4)(i)(B)

Explanation: 24 CFR 578.103(a) requires recipients to maintain records providing evidence they met program requirements and 24 CFR 578.103(a)(4)(i)(B) establishes the requirements for documenting disability for individuals and families who meet the "chronically homeless" definition in 24 CFR 578.3. Acceptable evidence of disability includes intake-staff recorded observations of disability that, no later than 45 days from the application for assistance, is confirmed and accompanied by evidence in paragraphs 24 CFR 578.103(a)(4)(i)(B)(1), (2), (3), or (5). HUD is waiving the requirement to obtain additional evidence.

Justification: Waiving 24 CFR 578.103(a)(4)(i)(B)(4) as specified below will allow recipients to house people by relying on intake staff-recorded observation of disability while providing recipients' intake staff with additional time to confirm the disability. This will help households with observed disabilities to be housed quickly and obtain the necessary documentation once healthcare workers are no longer inundated by COVID-19 responses.

Applicability: The requirement that intake staff-recorded observation of disability be confirmed and accompanied by other evidence no later than 45 days from the application for assistance documentation requirement is waived for any program participants admitted into PSH funded by the CoC Program for the 6-month period beginning on the date of this memorandum.

Note: For the purposes of individuals and families housed in PSH from the date of this memorandum until public health officials determine no additional special measures are necessary to prevent the spread of COVID-19, a written certification by the individuals seeking assistance that they have a qualifying disability is considered acceptable documentation approved by HUD under 24 CFR 578.103(a)(4)(i)(B)(5).

3. Limit on Eligible Housing Search and Counseling Services

Requirement: With respect to program participant's debts, 24 CFR 578.53(ed)(8)(ii)(B) only allows the costs of credit counseling, accessing a free personal credit report, and resolving personal credit issues. 24 CFR 578.53(d) limits the use of CoC Program funds for providing services to only those costs listed in the interim rule.

Citation: 24 CFR 578.53(e)(8)(ii)(B) and 578.53(d)

Explanation: 24 CFR 578.53(e)(8) allows recipients and subrecipients to use CoC funds to pay for housing search and counseling services to help eligible program participants locate, obtain, and retain suitable housing. For program participants whose debt problems make it difficult to obtain housing, 24 CFR 578.53(e)(8)(ii)(B) makes eligible the costs of credit counseling, accessing a free personal credit report, and resolving personal credit issues. However, payment of rental or utility arrears is not included as an eligible cost. 24 CFR 578.53(d) limits eligible supportive service costs to those explicitly listed in 24 CFR 578.53(e), which is a more limited list than is eligible under the McKinney-Vento Act.

Justification: Waiving the limitation of housing search and counseling eligible activities to allow recipients and subrecipients to pay for up to 6 months of rental arrears and 6 months of utility arrears will help recipients and subrecipients remove barriers to obtaining housing quickly and help reduce the spread and harm of COVID-19.

Applicability: The limitation on eligible housing search and counseling activities is waived so that CoC Program funds may be used for up to 6 months of a program participant's utility arrears and up to 6 months of program participant's rent arrears, when those arrears make it difficult to obtain housing. This waiver is in effect for one year beginning on the date of this memorandum.

4. Permanent Housing-Rapid Re-housing Monthly Case Management

Requirement: Recipients must require program participants of permanent housing – rapid re-housing projects to meet with a case manager at least monthly.

Citation: 24 CFR 578.37(a)(1)(ii)(F)

- Explanation:** The CoC Program interim rule at 24 CFR 578.37(a)(1)(ii)(F) requires program participants to meet with a case manager not less than once per month to assist them in ensuring long-term housing stability. The project is exempt from this requirement already if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.
- Justification:** Recipients are reporting limited staff capacity as staff members are home for a variety of reasons related to COVID-19 (e.g., quarantining, children home from school, working elsewhere in the community to manage the COVID-19 response). In addition, not all program participants have capacity to meet via phone or internet. Waiving the monthly case management requirement as specified below will allow recipients to provide case management on an as-needed basis and reduce the possible spread and harm of COVID-19.
- Applicability:** This requirement in 24 CFR 578.37(a)(1)(ii)(F) that projects require program participants to meet with case managers not less than once per month is waived for all permanent housing- rapid re-housing projects for one year beginning on the date of this memorandum.

5. Housing Quality Standards (HQS) – Initial Physical Inspection of Unit

- Requirement:** Recipients are required to physically inspect any unit supported with leasing or rental assistance funds to assure that the unit meets housing quality standards (HQS) before any assistance will be provided on behalf of a program participant.
- Citation:** 24 CFR 578.75(b)(1)
- Explanation:** 24 CFR 578.75(b)(1) requires that recipients or subrecipients physically inspect each unit to assure that it meets HQS before any assistance will be provided for that unit on behalf of a program participant.
- Justification:** Waiving the physical initial inspection requirement 24 CFR 578.75(b)(1) as specified below will allow recipients to help prevent the spread of COVID-19.
- Applicability:** This waiver of the requirement in 24 CFR 578.75(b)(1) that the recipient or subrecipient physically inspect each unit to ensure that the unit meets HQS before providing assistance on behalf of a program participant is in effect for 6 months beginning on the date of this memorandum for recipients and subrecipients that are able to meet the following criteria:

- a. The recipient is able to visually inspect the unit using technology, such as video streaming, to ensure the unit meets HQS before any assistance is provided; and
- b. The recipient or subrecipient has written policies to physically re-inspect the unit within 3 months after the date that the health officials determine special measures to prevent the spread of COVID-19 are no longer necessary.

6. HQS – Re-Inspection of Units

Requirement:	Recipients or subrecipients must inspect all units for which leasing or rental assistance funds are used at least annually to ensure they continue to meet HQS.
Citation:	24 CFR 578.75(b)(2)
Explanation:	24 CFR 578.75(b)(2) requires that recipients or subrecipients are required to inspect all units supported by leasing or rental assistance funding under the CoC Program at least annually during the grant period to ensure the units continue to meet HQS.
Justification:	Waiving the annual re-inspection 24 CFR 578.75(b)(2) requirement during this public health crisis as specified below will help allow recipients to prevent the spread of COVID-19.
Applicability:	This requirement in 24 CFR 578(b)(2) is waived for 1-year beginning on the date of this memorandum.

7. One-Year Lease Requirement

Requirement:	Program participants residing in PSH must be the tenant on a lease for a term of at least one year that is renewable and terminable for cause.
Citation:	24 CFR 578.3, definition of permanent housing, 24 CFR 578.51(l)(1)
Explanation:	The CoC Program regulation at 24 CFR 578.3, definition of permanent housing, and 24 CFR 578.51(l)(1) requires program participants residing in permanent housing to be the tenant on a lease for a term of one year that is renewable and terminable for cause.
Justification:	Waiving the one-year lease requirement as specified below will allow recipients to more quickly identify permanent housing for individuals and families experiencing homelessness, which is helpful in preventing the spread of COVID-19.
Applicability:	The one-year lease requirement is waived for six months beginning on the

date of this memorandum, so long as the initial lease term of all leases is for more than one month.

CONSOLIDATED PLAN REQUIREMENTS

8. Citizen Participation Public Comment Period for Consolidated Plan Amendment

- Requirement:** 30-day Public Comment Period.
- Citations:** 24 CFR 91.105(c)(2) and (k), 24 CFR 91.115(c)(2) and (i) and 24 CFR 91.401
- Explanation:** A CPD grantee may amend an approved consolidated plan in accordance with 24 CFR 91.505. Substantial amendments to the consolidated plan are subject to the citizen participation process in the grantee's citizen participation plan. The citizen participation plan must provide citizens with 30 days to comment on substantial amendments.
- Justification:** Given the need to expedite actions to respond to COVID-19, HUD waives 24 CFR 91.105(c)(2) and (k), 91.115(c)(2) and (i) as specified below, in order to balance the need to respond quickly to the growing spread and effects of COVID-19 with the statutory requirement to provide reasonable notice and opportunity for citizens to comment on substantial amendments concerning the proposed uses of CDBG, HOME, HTF, HOPWA or ESG funds.
- Applicability:** This 30-day minimum for the required public comment period is waived for substantial amendments, provided that no fewer than 5 days are provided for public comments on each substantial amendment. The waiver is available through the end of the recipient's 2020 program year. Any recipient wishing to undertake further amendments to prior year plans following the 2020 program year can do so during the development of its FY 2021 Annual Action Plan.

9. Citizen Participation Reasonable Notice and Opportunity to Comment

- Requirement:** Reasonable Notice and Opportunity to Comment.
- Citations:** 24 CFR 91.105(c)(2) and (k), 24 CFR 91.115(c)(2) and (i) and 24 CFR 91.401
- Explanation:** As noted above, the regulations at 24 CFR 91.105 (for local governments) and 91.115 (for States) set forth the citizen participation plan requirements for recipients. For substantial amendments to the consolidated plan, the regulations require the recipient to follow its citizen participation plan to

provide citizens with reasonable notice and opportunity to comment. The citizen participation plan must state how reasonable notice and opportunity to comment will be given.

Justification: HUD recognizes the efforts to contain COVID-19 require limiting public gatherings, such as those often used to obtain citizen participation, and that there is a need to respond quickly to the growing spread and effects of COVID-19. Therefore, HUD waives 24 CFR 91.105(c)(2) and (k), 24 CFR 91.115(c)(2) and (i) and 24 CFR 91.401 as specified below to allow these grantees to determine what constitutes reasonable notice and opportunity to comment given their circumstances.

Applicability: This authority is in effect through the end of the 2020 program year.

EMERGENCY SOLUTIONS GRANTS PROGRAM

10. HMIS Lead Activities

Requirement: ESG funds may be used to pay the costs of managing and operating the HMIS, provided that the ESG recipient is the HMIS Lead.

Citation: 24 CFR 576.107(a)(2)

Explanation: To enable ESG-funded projects to participate in HMIS as required by section 416(f) of the McKinney-Vento Homeless Assistance Act, 24 CFR 576.107(a)(2) authorizes the use of ESG funds for managing and operating the HMIS (e.g., hosting and maintaining HMIS software or data, upgrading, customizing, and enhancing the HMIS), only when the ESG recipient is the HMIS Lead, as designated by the CoC.

Justification: Waiving the rule as specified below would allow more recipients to use ESG funding to upgrade or enhance the HMIS as needed to incorporate ESG program data related to COVID-19.

Applicability: The condition that the recipient must be the HMIS Lead to pay costs under 24 CFR 576.102(a)(2) is waived to the extent necessary to allow any recipient to use ESG funds to pay costs of upgrading or enhancing its local HMIS to incorporate data on ESG Program participants and ESG activities related to COVID-19. This waiver is in effect for 6 months beginning on the date of this memorandum.

11. Re-evaluations for Homelessness Prevention Assistance

Requirement: Homelessness prevention assistance is subject to re-evaluation of each program participant's eligibility need for assistance not less than once every 3 months.

- Citation:** 24 CFR 576.401(b)
- Explanation:** The ESG regulations at 24 CFR 576.401(b) require recipients or subrecipients providing homelessness prevention assistance to re-evaluate the program participant's eligibility, and the types and amounts of assistance the program participant needs, not less than once every 3 months.
- Justification:** Waiving re-evaluation requirement for homelessness prevention assistance as specified below is necessary to help program participants remain stable in housing during the economic uncertainty caused by COVID-19.
- Applicability:** The required frequency of re-evaluations for homelessness prevention assistance under section 576.401(b) is waived for up to 2 years beginning on the date of this memorandum, so long as the recipient or subrecipient conducts the required re-evaluations not less than once every 12 months.

12. Housing Stability Case Management

- Requirement:** Program participants receiving homelessness prevention or rapid re-housing assistance must meet with a case manager not less than once per month, unless certain statutory prohibitions apply.
- Citation:** 24 CFR 576.401(e)
- Explanation:** Under 24 CFR 576.401(e), the recipients or subrecipients must require program participants to meet with a case manager not less than once per month to assist them in ensuring long-term housing stability, unless the Violence Against Women Act of 1994 or Family Violence Prevention and Services Act prohibits the recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.
- Justification:** Recipients are reporting limited staff capacity as staff members are home for a variety of reasons related to COVID-19 (e.g., quarantining, children home from school, working elsewhere in the community to manage the COVID-19 response). In addition, not all program participants have capacity to meet via phone or internet. Waiving the monthly case management requirement as specified below will allow recipients to provide case management on an as-needed basis and reduce the possible spread and harm of COVID-19.
- Applicability:** This waiver is in effect for one year beginning on the date of this memorandum.

13. Restriction of Rental Assistance to Units with Rent at or Below FMR

- Requirement:** Restriction of rental assistance to units with rent at or below FMR.

- Citation:** 24 CFR 576.106(d)(1)
- Explanation:** Under 24 CFR 576.106(d)(1), rental assistance cannot be provided unless the total rent is equal to or less than the FMR established by HUD, as provided under 24 CFR Part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
- Justification:** Quickly moving people into permanent housing is especially critical in preventing the spread of COVID-19. Waiving the limit on rental assistance to rents that are equal to or less than the FMR, established by HUD, will assist recipients and subrecipients in more quickly locating additional units to house individuals and families experiencing homelessness.
- Applicability:** The FMR restriction is waived for any individual or family receiving Rapid Re-housing or Homelessness Prevention assistance who executes a lease for a unit during the 6-month period beginning on the date of this memorandum. The ESG recipient or subrecipient must still ensure that the units in which ESG assistance is provided to these individuals and families meet the rent reasonableness standard.

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA)

14. HOPWA – Self-Certification of Income and Credible Information on HIV Status

- Requirement:** Source Documentation for Income and HIV Status Determinations.
- Citation:** 24 CFR 574.530, Recordkeeping
- Explanation:** Each grantee must maintain records to document compliance with HOPWA requirements, which include determining the eligibility of a family to receive HOPWA assistance.
- Justification:** This waiver will permit HOPWA grantees and project sponsors to rely upon a family member's self-certification of income and credible information on his or her HIV status (such as knowledge of the individual's HIV-related medical care) in lieu of source documentation to determine eligibility for HOPWA assistance of families and grantees affected by COVID-19.
- Applicability:** Eligibility is restricted to a low-income person who is living with HIV/AIDS and the family of such person. This waiver is in effect for recipients who require written certification of the household seeking assistance of their HIV status and income, and agree to obtain source documentation of HIV status and income eligibility within 3 months of public health officials determining no additional special measures are

necessary to prevent the spread of COVID-19.

15. HOPWA – FMR Rent Standard

- Requirement:** Rent Standard for Tenant-Based Rental Assistance (TBRA).
- Citation:** 24 CFR 574.320(a)(2), Rent Standard
- Explanation:** Grantees must establish rent standards for their tenant-based rental assistance programs based on FMR (Fair Market Rent) or the HUD-approved community-wide exception rent for unit size. Generally, the TBRA payment may not exceed the difference between the rent standard and 30 percent of the family's adjusted income.
- Justification:** This waiver of the FMR rent standard limit permits HOPWA grantees to establish rent standards, by unit size, that are reasonable, and based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management and maintenance of each unit. Grantees, however, are required to ensure the reasonableness of rent charged for a unit in accordance with §574.320(a)(3).
- This waiver is required to expedite efforts to identify suitable housing units for rent to HOPWA beneficiaries and HOPWA-eligible families who have been affected by COVID-19, and to provide assistance to families who must rent units at rates that exceed the HOPWA grantee's normal rent standard as calculated in accordance with §574.320(a)(2).
- Applicability:** Such rent standards may be used for up to one year beginning on the date of this memorandum.

16. HOPWA – Property Standards for TBRA

- Requirement:** Property Standards for Tenant-Based Rental Assistance (TBRA)
- Citation:** 24 CFR 574.310(b), Housing Quality Standards
- Explanation:** This section of the HOPWA regulations provides that units occupied by recipients of HOPWA TBRA meet the Housing Quality Standards (HQS) established in this section.
- Justification:** This waiver is required to enable grantees and project sponsors to expeditiously meet the critical housing needs of the many eligible families affected by COVID-19 while also minimizing the spread of the coronavirus.
- Applicability:** This waiver is in effect for one year beginning on the date of this

memorandum for recipients and project sponsors that are able to meet the following criteria:

- a. The recipient or project sponsor is able to visually inspect the unit using technology, such as video streaming, to ensure the unit meets HQS before any assistance is provided; and
- b. The recipient or subrecipient has written policies to physically re-inspect the unit after the health officials determine special measures to prevent the spread of COVID-19 are no longer necessary.

17. HOPWA Space and Security

Requirement: Adequate Space and Security.

Citation: 24 CFR 574.310(b)(2)(iii), Space and security

Explanation: This section of the HOPWA regulations provide that each resident must be afforded adequate space and security for his or herself and belongings.

Justification: This waiver is required to enable grantees and project sponsors operating housing facilities and shared housing arrangements the flexibility to use optional appropriate spaces for quarantine services of eligible households affected by COVID-19. Optional spaces may include the placement of families in a hotel/motel room where family members may be required to utilize the same space not allowing for adequate space and security for themselves and their belongings.

Applicability: This space and security requirement is waived for grantees addressing appropriate quarantine space for affected eligible households during the allotted quarantined time frame recommended by local health care professionals.

Attachment #1 to Memorandum:

Procedure for Using Available Waivers of Program and Consolidated Plan Requirements to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19

This attachment provides further information on the process that grantees must follow to use the waiver flexibility provided in the memorandum.

Grantees must mail or email notification to the Community Planning and Development Director of the HUD Field Office serving the grantee.

The mail or email notification must be sent two days before the grantee anticipates using waiver flexibility, and include the following details:

- Requestor's name, title, and contact information;
- Declared-disaster area(s) where the waivers will be used;
- Date on which the grantee anticipates first use of the waiver flexibility; and
- A list of the waiver flexibilities the grantee will use:
 1. CoC Program - Fair Market Rent for Individual Units and Leasing Costs
 2. CoC Program - Disability Documentation for Permanent Supportive Housing (PSH)
 3. CoC Program – Limit on Eligible Housing Search and Counseling Services
 4. CoC Program - Permanent Housing-Rapid Re-housing Monthly Case Management
 5. CoC Program - Housing Quality Standards (HQS) – Initial Physical Inspection of Unit
 6. CoC Program - HQS – Re-Inspection of Units
 7. CoC Program – One-Year Lease Requirement
 8. Consolidated Planning Requirements – HOME, CDBG, HTF, ESG, and HOPWA Programs – Citizen Participation Public Comment Period for Consolidated Plan Amendment
 9. Consolidated Planning Requirements – HOME, CDBG, HTF, ESG, and HOPWA Programs – Citizen Participation Reasonable Notice and Opportunity to Comment
 10. ESG Program - HMIS Lead Activities
 11. ESG Program - Re-evaluations for Homelessness Prevention Assistance
 12. ESG Program - Housing Stability Case Management
 13. ESG Program - Restriction of Rental Assistance to Units with Rent at or Below FMR
 14. HOPWA Program – Self-Certification of Income and Credible Information on HIV Status
 15. HOPWA Program – FMR Rent Standard
 16. HOPWA Program – Property Standards for TBRA
 17. HOPWA Program - Space and Security



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

May 22, 2020

MEMORADUM FOR: All Community Planning and Development Field Office Directors,
Deputy Directors and Program Managers

FROM: John Gibbs, Assistant Secretary, Acting, D

SUBJECT: Availability of Additional Waivers for Community Planning and
Development (CPD) Grant Programs to Prevent the Spread of
COVID-19 and Mitigate Economic Impacts
Caused by COVID-19

PURPOSE

This memorandum explains the availability of waivers of certain regulatory requirements and one NOFA requirement associated with several CPD grant programs to prevent the spread of COVID-19 and to facilitate assistance to eligible communities and households economically impacted by COVID-19. This memorandum covers program-specific waivers for the following CPD programs:

- Housing Opportunities for Persons with AIDS (HOPWA);
- Continuum of Care (CoC);
- Youth Homelessness Demonstration Program (YHDP); and
- Emergency Solutions Grants Program

This memorandum also announces a simplified notification process for recipients of these programs to use this waiver flexibility to expedite the delivery of assistance. CPD Field Office Directors, Deputy Directors, and Program Managers are instructed to inform CPD recipients operating within their jurisdictions of the content of this memorandum.

NOTIFICATION PROCESS

Recipients may use the waivers described in this memorandum to assist affected CPD program beneficiaries and CPD program eligible households to prevent the spread of COVID-19 and to mitigate against the economic impact caused by COVID-19 for eligible households. To use the waiver flexibility provided in this memorandum, the recipient must provide notification in writing, either through mail or e-mail, to the CPD Director of the HUD Field Office serving its jurisdiction no less than two days before the recipient anticipates using the waiver flexibility. Further directions on notifying HUD can be found in Attachment #1.

WAIVER AUTHORITY

In December 2019, a new coronavirus known as SARS-CoV-2 was first detected in Wuhan, Hubei Province, People's Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has now spread globally. The first case was reported in the United States in January 2020. In March 2020, the World Health Organization declared the coronavirus outbreak a pandemic and President Trump declared the outbreak a national emergency. During this time, the majority of states have declared states of emergency with most shutting down large gathering places and limiting the movement of their residents. As a consequence, many CPD recipients are facing challenges in ensuring appropriate shelter options are available for program participants who need to be separated from others because they are exhibiting symptoms, training staff on how to safely work with program participants and prevent spreading the virus, obtaining supplies to prevent the spread of the virus, and maintaining necessary staffing levels during the outbreak. Further, many program participants are suffering economic consequences from the mass shutdown of businesses and lack of availability of traditional mainstream benefits. A number of recipients have inquired about the availability of waivers of various CPD program requirements to facilitate assistance to program participants and prevent the spread of the virus.

In accordance with 24 CFR 5.110, HUD may, upon a determination of good cause and subject to statutory limitations, waive regulatory provisions. Additional regulatory waiver authority is provided in 24 CFR 91.600. On March 31, 2020, CPD issued its first waivers of regulatory authority to help recipients prevent and mitigate the spread of COVID-19. This memorandum includes additional waivers for the ESG, CoC, YHDP, and HOPWA Programs.

WAIVER AVAILABILITY

To provide additional flexibility to communities to prevent the spread of COVID-19 and better assist individuals and families, including those experiencing homelessness infected with the virus or economically impacted by the virus, I hereby find good cause to provide the regulatory waivers below. To use each waiver, each recipient must follow the notification process described above and update its program records to include written documentation of the specific conditions that justify the recipient's use of the waiver, consistent with the justifications and applicability provisions below. Provisions that are not specifically waived remain in full effect.

EMERGENCY SOLUTIONS GRANT PROGRAM

To the extent that funding provided under the CARES Act for the ESG program is subject to the same requirements in 24 CFR part 576 that apply to ESG funding provided through annual appropriations, the waivers made available on March 31, 2020 for ESG are made available with respect to the CARES Act funding for the same justifications and subject to the same conditions.

Additionally, the following housing stability case management waiver is made available with respect to all ESG grants, whether funded under the CARES Act or annual ESG appropriations.

1. Housing Stability Case Management

- Requirement:** Program participants receiving homelessness prevention or rapid re-housing assistance must meet with a case manager not less than once per month, unless certain statutory prohibitions apply.
- Citation:** 24 CFR 576.401(e)
- Explanation:** Under 24 CFR 576.401(e), the recipients or subrecipients must require program participants to meet with a case manager not less than once per month to assist them in ensuring long-term housing stability, unless the Violence Against Women Act of 1994 or Family Violence Prevention and Services Act prohibits the recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services. As provided by the CARES Act, people experiencing homelessness cannot be required to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, housing, or other services funded with ESG grants provided under the CARES Act. Accordingly, 24 CFR 576.401(e) does not apply to the extent the assistance is provided with CARES Act funding to people who qualified as homeless at the start of that assistance.
- Justification:** HUD originally waived this requirement for 2-months on March 31, 2020. Recipients are continuing to report limited staff capacity as staff members are home for a variety of reasons related to COVID-19 (e.g., quarantining, children home from school, working elsewhere in the community to manage the COVID-19 response). In addition, not all program participants have capacity to meet via phone or internet. Waiving the monthly case management requirement as specified below will allow recipients to provide case management on an as needed basis and reduce the possible spread and harm of COVID-19.
- Applicability:** This waiver is in effect for an additional three months beginning on the date of this memorandum.

CONTINUUM OF CARE PROGRAM and YOUTH HOMELESSNESS DEMONSTRATION PROGRAM

To the extent YHDP grants are subject to the same requirements in 24 CFR part 578 that apply to grants provided under the CoC Program, the same waivers made available on March 31, 2020 for grants provided under the CoC Program are made available to YHDP grants for the same justifications and subject to the same conditions. Additionally, the following waivers are available to CoC Program and YHDP recipients.

2. Permanent Housing Rapid Re-housing Limit to 24 Months of Rental Assistance

- Requirement:** CoC Program funds may be used to provide short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance.
- Citation:** 24 CFR 578.37(a)(1)(ii), 24 CFR 578.37(a)(1)(ii)(C), and 24 CFR 578.51(a)(1)(i)
- Explanation:** The CoC Program regulation at 24 CFR 578.37(a)(1)(ii) and 24 CFR 578.51(a)(1)(i) defines medium-term rental assistance as 3 to 24 months and 578.37(a)(1)(ii) and 24 CFR 578.37(a)(1)(ii)(C) limits rental assistance in rapid re-housing projects to medium-term rental assistance, or no more than 24 months.
- Justification:** Waiving the limit on using rental assistance in rapid re-housing projects to pay more than 24 months will ensure that individuals and families currently receiving rapid re-housing assistance do not lose their assistance, and consequently their housing, during the COVID-19 public health crisis and the subsequent economic downturn. This will reduce the spread and harm of COVID-19 by enabling affected program participants to continue to socially isolate in their housing.
- Applicability:** The 24-month rental assistance restriction is waived for program participants in a permanent housing rapid re-housing project who will have reached 24 months of rental assistance beginning on the date of this memorandum until a state or local public health official has determined special measures are no longer necessary to prevent the spread of COVID-19. Program participants who have reached 24 months of rental assistance during this time and who will not be able to afford their rent without additional rental assistance will be eligible to receive rental assistance until 3 months after a state or local public health official has determined that special measures are no longer necessary to prevent the spread of COVID-19.

3. Limit to be Eligible for DedicatedPLUS Project When Coming from Transitional Housing Being Eliminated

- Requirement:** To be eligible for a DedicatedPLUS project an individual or family must meet the criteria of DedicatedPLUS in the Notice of Funding Availability under which the grant was awarded. One of the possible criteria is residing in transitional housing *that will be eliminated* and meeting the definition of chronically homeless in effect at the time in which the individual or family entered the transitional housing project.
- Citation:** Section III.C.3.f.(2) of the FY 2018 CoC Program Competition NOFA and Section III.C.2.g.(2) of the FY 2019 CoC Program Competition NOFA.
- Explanation:** Section III.C.3.f.(2) of the FY 2018 CoC Program Competition NOFA and Section III.C.2.g.(2) of the FY 2019 CoC Program Competition NOFA

define a DedicatedPLUS project as a PSH project where 100 percent of the beds are dedicated to serve individuals and families residing in one of six places at intake, including residing in a transitional housing project that will be eliminated.

Justification: Waiving the requirement within the definition of DedicatedPLUS project that the transitional housing project is being eliminated will expand permanent housing options available for people moving out of transitional housing and will make more transitional housing beds available to others who need it. Expanding permanent housing options for persons in transitional housing will assist in preventing the spread of COVID-19 by allowing more people to move off the streets and into transitional housing.

Applicability: The definition of DedicatedPLUS project is waived for DedicatedPLUS projects funded in the FY 2018 and FY 2019 CoC Program Competitions to allow these projects to serve individuals and families residing in transitional housing, whether it is being eliminated or not, as long as the individual or family met the definition of chronically homeless upon entry to the TH.

4. Assistance Available at Time of Renewal

Requirement: With respect to renewing CoC Program awards, 24 CFR 578.33(c) requires that assistance for a renewal period will be up to 100 percent of the amount available for supportive services and HMIS costs in the final year of the prior funding period, up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in FMR for the geographic area, and for rental assistance up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the grant agreement and the applicable FMR.

Citation: 24 CFR 578.33(c)

Explanation: 24 CFR 578.33(c) requires that budget line item amounts a recipient is awarded for renewal in the CoC Program Competition will be based on the amounts in the final year of the prior funding period for the project.

Justification: Waiving the requirement that the renewal grant amount is based on the budget line items in the final year of the grant being renewed will allow recipients to amend their budgets temporarily to address the needs of its program participants in responding to COVID-19 (e.g., providing different supportive services necessitated by the pandemic or serving fewer people because of the layout of the housing does not meet local social distancing recommendations) without changing the original design of the project when it is not operating in a public health crisis and can resume normal operations.

Applicability: The requirement that the renewal grant amount be based on the budget line items in the final year of the grant being renewed is waived for all projects that amend their grant agreement between March 31, 2020 and October 1, 2020 to move funds between budget line items in a project in response to the COVID-19 pandemic. Recipients may then apply in the next FY CoC Program Competition based on the budget line items in the grants before they were amended.

Notification: Recipients utilizing this waiver flexibility do not need to follow the notification process outlined in Attachment #1. Instead, HUD will consider any grant agreement amendment executed between March 31, 2020 and October 1, 2020 to move funds between budget line items in response to the COVID-19 pandemic as notification to HUD.

5. Permanent Housing-Rapid Re-housing Monthly Case Management

Requirement: Recipients must require program participants of permanent housing – rapid re-housing projects to meet with a case manager at least monthly.

Citation: 24 CFR 578.37(a)(1)(ii)(F)

Explanation: The CoC Program interim rule at 24 CFR 578.37(a)(1)(ii)(F) requires program participants to meet with a case manager not less than once per month to assist them in ensuring long-term housing stability. The project is exempt from this requirement already if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

Justification: HUD originally waived this requirement for 2-months beginning March 31, 2020. Recipients are continuing to report limited staff capacity as staff members are home for a variety of reasons related to COVID-19 (e.g., quarantining, children home from school, working elsewhere in the community to manage the COVID-19 response). In addition, not all program participants have capacity to meet via phone or internet. Waiving the monthly case management requirement as specified below will allow recipients to provide case management on an as-needed basis and reduce the possible spread and harm of COVID-19.

Applicability: This requirement in 24 CFR 578.37(a)(1)(ii)(F) that projects require program participants to meet with case managers not less than once per month is waived for all permanent housing- rapid re-housing projects for an additional three months beginning on the date of this memorandum.

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA)

6. HOPWA – Time Limits for Short-Term Housing Facilities and Short-Term Rent,

Mortgage, and Utility Payments

- Requirement:** Time Limits for Short-Term Supported Housing
- Citation:** 24 CFR 574.330(a)(1), Time Limits
- Explanation:** A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six-month period. Short-Term Rent, Mortgage, and Utility (STRMU) payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided for costs accruing over a period of more than 21 weeks in any 52-week period.
- Justification:** This waiver is required to prevent homelessness or discharge to unstable housing situations for households residing in short-term housing facilities or units assisted with STRMU if permanent housing cannot be achieved within the time limits specified in the regulation.
- Applicability:** On an individual household basis, grantees or project sponsors may assist eligible households for a period that exceeds the time limits specified in the regulations. A short-term supported housing facility may provide residence to any individual for a period of up to 120 days in a six-month period. STRMU payments to prevent the homelessness of the tenant or mortgagor of a dwelling may be provided for costs accruing up to 52 weeks in a 52-week period.
- This waiver is in effect for one year beginning on the date of this memorandum for grantees and project sponsors that are able to meet the following criteria:
- a. The grantee or project sponsor documents that a good faith effort has been made on an individual household basis to assist the household to achieve permanent housing within the time limits specified in the regulations but that financial needs and/or health and safety concerns have prevented the household from doing so; and
 - b. The grantee or project sponsor has written policies and procedures outlining efforts to regularly reassess the needs of assisted households as well as processes for granting extensions based on documented financial needs and/or health and safety concerns.

7. HOPWA – Property Standards

- Requirement:** Property Standards for HOPWA
- Citation:** 24 CFR 574.310(b), Housing Quality Standards
- Explanation:** This section of the HOPWA regulations provides that all housing assisted

with acquisition, rehabilitation, conversion, lease, or repair; new construction of single room occupancy dwellings and community residences; project or tenant-based rental assistance; or operating costs must meet the applicable housing quality standards outlined in the regulations.

Justification: This waiver is required to enable grantees and project sponsors to expeditiously meet the critical housing needs of the many eligible families that have been affected by COVID-19 while also minimizing the spread of coronavirus.

Applicability: This waiver is in effect for one year beginning on the date of this memorandum for grantees and project sponsors that are able to meet the following criteria:

- a. The grantee or project sponsor is able to visually inspect the unit using technology, such as video streaming, to ensure the unit meets HQS before any assistance is provided; and
- b. The grantee or project sponsor has written policies to physically reinspect the unit after the health officials determine special measures to prevent the spread of COVID-19 are no longer necessary.

8. HOPWA – FMR Rent Standard

Requirement: Rent Standard for HOPWA Rental Assistance

Citation: 24 CFR 574.320(a)(2), Rent Standard

Explanation: Grantees must establish rent standards for their rental assistance programs based on FMR (Fair Market Rent) or the HUD-approved community-wide exception rent for unit size. Generally, the rental assistance payment may not exceed the difference between the rent standard and 30 percent of the family's adjusted income.

Justification: This waiver of the FMR rent standard limit permits HOPWA grantees to establish rent standards, by unit size, that are reasonable, and based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management and maintenance of each unit. Grantees, however, are required to ensure the reasonableness of rent charged for a unit in accordance with §574.320(a)(3).

This waiver is required to expedite efforts to identify suitable housing units for rent to HOPWA beneficiaries and HOPWA-eligible families that have been affected by COVID-19, and to provide assistance to families that must rent units at rates that exceed the HOPWA grantee's normal rent standard as calculated in accordance with §574.320(a)(2).

Applicability: Such rent standards may be used for up to one year beginning on the date of this memorandum.

Attachment #1 to Memorandum:**Procedure for Using Available Waivers of Program and Consolidated Plan Requirements to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19**

This attachment provides further information on the process that grantees must follow to use the waiver flexibility provided in the memorandum.

Grantees must email notification to the Community Planning and Development Director of the HUD Field Office serving the grantee.

The email notification must be sent two days before the grantee anticipates using waiver flexibility, and include the following details:

- Requestor's name, title, and contact information;
- Date on which the grantee anticipates first use of the waiver flexibility; and
- A list of the waiver flexibilities the grantee will use:
 1. ESG Program – Housing Stability Case Management
 2. CoC Program and YHDP - Permanent Housing Rapid Re-housing Limit to 24 Months of Rental Assistance
 3. CoC Program NOFA Requirement– Limit to be Eligible for DedicatedPLUS Project When Coming from Transitional Housing (TH) that TH Must be Being Eliminated
 5. CoC – Permanent Housing – Rapid Re-housing Monthly Case Management
 6. HOPWA – Time Limits for Short-Term Housing Facilities and Short-Term Rent, Mortgage, and Utility Payments
 7. HOPWA – Property Standards
 8. HOPWA – FMR Rent Standard

Attachment V

Chapter 26 - CODE OF ETHICS^{III}

Footnotes:

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Charter reference— Code of ethics, § 7.02.

Cross reference— Administration, ch. 2; departments, offices and divisions, § 2-26 et seq.; boards, commissions and committees, § 2-581 et seq.; elected officials, ch. 30; personnel, ch. 66.

ARTICLE I. - IN GENERAL

Sec. 26-1. - Penalties for violation of chapter.

Any officer, official, candidate or employee who fails to comply with the requirements of this chapter shall be subject to admonishment or reprimand and a record of noncompliance shall be furnished to the city clerk for report to the city council. Violations of this chapter shall carry the penalties set forth in the Charter for violations of the general provisions of this Code. Before imposing a penalty arising out of alleged violations of the financial disclosure provisions, a person shall be given an opportunity to amend financial disclosure information to comply with this chapter. Notice of any discrepancy discovered in the finance disclosures provided and an opportunity to amend shall be given to the affected official, officer, candidate or employee by the city council. Both the original and amended disclosure forms will remain as a public record. For a serious, nontechnical and material violation or for repeated violations of this chapter, an officer, official, candidate or employee may be removed from office, position or ballot, but only after a decision of the city council, pursuant to advertised public hearing and procedural due process afforded quasi-judicial hearings, or by order of a court of competent jurisdiction.

(Ord. No. 99-27, § 1(4-11), 2-23-1999)

Sec. 26-2. - Disclosure requirements for contractors and other persons transacting business with city.

- (a) All contracts or business transactions or renewals with the city or any person or agency acting for the city in an amount in excess of \$100.00, including but not limited to contracts for public improvements, contracts for purchase of supplies, materials or services, leases, franchises, concessions or management agreements, shall require the person contracting or transacting business with the city to disclose under oath, prior to a bid being awarded to or a contract being executed with the person, such person's full legal name and business address. Such contract or transaction shall also require the disclosure under oath of the full legal name and business address of all individuals having any interest (legal, equitable, beneficial or otherwise) in the contract; provided, however, no disclosure shall be required of subcontractors, materialmen, suppliers, laborers or lenders. Post office box addresses shall not be accepted. If the contract or business transaction is with a corporation, the information shall be provided for each officer and director and each stockholder holding, directly or indirectly, five percent or more of the outstanding stock in such corporation. If the contract or business transaction is with a partnership, the information shall be provided for each general partner. If the contract or business transaction is with a trust, the information shall be provided for the trustee and each beneficiary of the trust. All assignments of any such contract or transaction, if otherwise authorized, shall comply with the required disclosures. Notwithstanding anything in this section to the contrary, the disclosure requirements of this subsection shall not apply to contracts with publicly traded corporations or to contracts with the United States or any department or agency thereof, the state or any political subdivision or agency thereof, other states or political subdivisions thereof, or any municipality of this or any other state. Any contract or transaction entered into in violation of this section shall be voidable.
- (b) Financial institutions with which the city and its retirement systems invest its money shall be exempt from the disclosure requirements of this section.

(Code 1960, § 2-152.1; Ord. No. 89-56, § 1, 5-9-1989; Ord. No. 89-80, § 1, 8-22-1989; Ord. No. 99-27, § 1(4-4), 2-23-1999)

Sec. 26-3. - Disclosure of parties in interest by persons making presentations or requests to city council or boards.

- (a) All parties making any presentation, formal request or petition to the city council or any city board, with respect to any real property, shall be required to make full disclosure, in writing, on a form supplied by the clerk of the city council or secretary to the board of all parties having a financial interest, either direct or indirect, in the subject matter of such presentation, formal request or petition. The required disclosure shall include but not be limited to disclosure of all natural persons having an ownership interest, direct or indirect, legal or equitable, in the subject real property, even if held in trust; those having any interest in a contract for sale of the property, including real estate brokers and salespersons; and any and all mortgagees of the property.
- (b) The disclosure required by subsection (a) of this section must be provided or updated within a reasonable time, as may be necessary, in order to ensure that the information disclosed is accurate at the time of filing and at all times thereafter, up to and including six months after final action is taken.
- (c) Where the disclosure required by subsection (a) of this section is not made and is subsequently discovered, the city council or board shall not consider the presentation, formal request or petition, unless good cause is shown why such disclosure was not made.
- (d) Upon a finding made by the city council that this section has been violated, the action taken with respect to the subject real property is voidable.

(Code 1960, § 2-157; Ord. No. 88-84, § 7, 8-9-1988; Ord. No. 99-27, § 1(4-8), 2-23-1999)

Secs. 26-4—26-30. - Reserved.

ARTICLE II. - CITY OFFICERS AND EMPLOYEES

Sec. 26-31. - Applicability.

Unless otherwise indicated, this article shall be applicable to and binding upon officers, officials, board members, committee members, commission members or members of agencies of the city identified as follows:

- (1) Mayor.
- (2) City council.
- (3) City attorney, assistant city attorneys and law department staff.
- (4) Director of the water and sewers department.
- (5) Director of the planning and development department.
- (6) Director of code compliance.
- (7) Licensing administrator.
- (8) City clerk.
- (9) Fire chief.
- (10) Police chief.
- (11) All department and division heads.
- (12) Building inspectors.
- (13) Code enforcement inspectors.
- (14) Fire inspectors.
- (15) License inspectors.
- (16) Solid waste inspectors.
- (17) Purchasing agent and staff of the purchasing division.
- (18) All other city employees having the authority to manage, monitor, review and/or award contracts, grants and/or purchase orders.
- (19) All city employees who review plans, applications, or provide assistance or advice to the public and professionals in connection with zoning and land use matters and occupational licensing.
- (20) Code enforcement board members.
- (21) Planning and zoning board members.
- (22) Housing authority members.
- (23) Retirement board members.
- (24) Personnel board members.

(Ord. No. 99-27, § 1(4-1), 2-23-1999)

Sec. 26-32. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Person includes all individuals referenced in section 26-31 and the following relatives of such person: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister and all other employees not referenced in section 26-31.

(Ord. No. 99-27, § 1(4-2), 2-23-1999)

Cross reference— Definitions generally, § 1-2.

Sec. 26-33. - Transacting business with or appearing before city council, agencies or boards.

- (a) No person named in section 26-32 shall enter into any contract or transact any business with the city, either directly or through any person or agency acting under contract to the city. No such person shall appear in representation of any third party before the city council or other city board, commission or agency except as provided in subsection (b) of this section. Any such contract, agreement or appearance that violates this section shall render the transaction or decision voidable, and if the agreement is declared void, the city shall require return of any sums paid by the city.
- (b) The prohibition upon any activity described in subsection (a) of this section shall remain in effect for a period of one year after the officer, official or employee has left city service or terminated city employment. However, no person shall appear in representation of any third party for compensation before the city council or other city board, commission or agency for a period of two years after the officer, official or employee has left city service or terminated city employment, unless employed by another governmental entity. This section does not prohibit an affected officer, official or employee from representing himself or from presenting personal opinions as a citizen or resident.

(Code 1960, § 2-152; Ord. No. 88-84, § 2, 8-9-1988; Ord. No. 91-43, § 2, 5-28-1991; Ord. No. 99-27, § 1(4-3), 2-23-1999)

Sec. 26-34. - Accepting gifts from persons doing business with city.

- (a) Definition. As used in this section, the term "gift" shall refer to the transfer of anything of economic value for any of the purposes stated in subsection (b) of this section, whether in the form of money, real or personal property, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. The term "gift" shall not apply to the following:
 - (1) Political contributions specifically authorized by state law.
 - (2) Tickets to fundraising events or testimonials, meals or cocktail parties.
 - (3) Personal gifts from relatives or gifts from friends who have not transacted business with the city during the reporting year.
 - (4) Awards for professional or civic achievement.
 - (5) Informational material, reports, periodicals or advertisements.
- (b) Prohibitions. All persons described in section 26-31 and all other employees shall be expressly prohibited from accepting, directly or indirectly, from any person to whom any purchase order or contract has been, within the preceding six months, or might reasonably be expected within the next six months to be awarded, any rebate, gift, money or anything of value whatsoever, except where given for the use and benefit of the city. Any person described in section 26-31 and all other employees shall neither solicit, demand nor accept or agree to accept any gift to influence any official public action or decision or future action or decision or the possibility of an action or decision, to influence the performance or future performance or possibility of performance of a legal duty, or to influence the violation or future violation or the possibility of a violation of a legal duty. It shall be unlawful for any person to offer, give, or agree to give a gift to any person described in section 26-31 and all other employees to influence any official public action taken or legal duty performed or violated.
- (c) Disclosure. Any person included in section 26-31 and all other employees shall disclose, as provided in this article, any gift or series of gifts from any one person having a value in excess of \$75.00. This disclosure shall be made by filing a disclosure form with the clerk of the city council on July 1 of each year for the preceding calendar year ending December 31.

(Code 1960, § 2-153; Ord. No. 88-84, § 3, 8-9-1988; Ord. No. 99-27, § 1(4-5), 2-23-1999)

Sec. 26-35. - List of real estate owned by certain elective and appointive officers or employees.

- (a) All individuals identified in section 26-31 are subject to the requirements of this section.
- (b) Any individual identified in section 26-31 shall submit to the city clerk on July 1 and every July 1 thereafter a complete itemized list of all real property owned by the individual, whether the title be legal or equitable, whether owned in whole or in part, including the corporate real property in which the individual has an interest, unless such interest is merely by virtue of ownership of less than five percent of stock in a publicly listed and traded corporation, including the legal description or common address if less than two acres, the municipal or county zoning classification of the property and the manner in which the property is presently being utilized.
- (c) The itemized list shall be notarized.
- (d) All officers, officials, candidates for office or employees enumerated in subsection (a) of this section shall submit, within 30 days of their election, appointment, qualification to run for office or hiring, an itemized list, verified under oath, of all real estate holdings as provided in this section.

(Code 1960, § 2-154; Ord. No. 88-84, § 4, 8-9-1988; Ord. No. 99-27, § 1(4-6), 2-23-1999)

Sec. 26-36. - Financial disclosure.

- (a) In addition to the financial disclosure requirements of state law and the Miami-Dade County Code the mayor, councilmembers and all other persons listed in section 26-31 shall be required to provide the following information to the city clerk in writing, by July 1 of each year following each year in which they are in office or employed for any period between January 1 and December 31:
 - (1) A listing of all debt and amounts owed in excess of \$5,000.00, including disclosure with respect to the person to whom the debt is owed.
 - (2) A listing of all amounts and all sources of gross income to the individual in excess of \$5,000.00, excluding the salary paid by the city and interest or dividends earned on investments.

- (3) A description of all personal property assets having a value in excess of \$5,000.00, including but not limited to certificates of deposit, stocks, bonds, bank accounts, promissory notes, mortgages and motor vehicles. Household goods, such as jewelry, clothing, art, stamp and coin collections, are specifically exempted from this subsection.
- (4) All liabilities in excess of \$5,000.00, including the name and address of all such creditors, including but not limited to average credit card and retail installment account balances, taxes owed and indebtedness on a life insurance policy.
- (b) The person reporting shall execute an affidavit attesting to the accuracy of the disclosure to the best of the person's ability, at the time of the disclosure, based upon knowledge and belief of the person disclosing.
- (c) As an alternative to the requirements set forth in this section, a copy of the reporting person's filed federal income tax return, excluding schedules and supporting documentation, for the relevant year may be provided.
- (d) The city clerk shall maintain the records of all financial disclosures required in this section and will report to the city council no later than the second regularly scheduled meeting of the city council in August of each year. The city clerk shall request submittal of financial disclosure forms from department heads.

(Code 1960, § 2-158; Ord. No. 88-84, § 8, 8-9-1988; Ord. No. 99-27, § 1(4-7), 2-23-1999)

Sec. 26-37. - Relatives of elected city officials prohibited from serving or remaining in service on city boards, commissions or agencies.

- (a) As used in this section the term "relative," with respect to the elected official, means an individual who is related to the elected official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.
- (b) An elected official of the city may not appoint, promote, or advance or advocate for appointment, promotion or advancement to a position on any city board, commission or agency, including the board of trustees of the retirement system, any individual who is a relative of the elected official.
- (c) No relative of any elected official of the city shall serve or remain in service in a position on any city board, commission or agency, including the board of trustees of the retirement system, while the elected official is in office.

(Code 1960, § 2-159; Ord. No. 95-9, § 1, 2-14-1995; Ord. No. 99-27, § 1(4-9), 2-23-1999)

Sec. 26-38. - Holding other office.

No elected city official shall hold any appointive city office, board membership, or employment while in office, except as provided by state law. No former elected city official shall hold any compensated appointive city office or emolument until one year after the termination of the official's service.

(Code 1960, § 2-171; Ord. No. 99-27, § 1(4-10), 2-23-1999)

Secs. 26-39—26-65. - Reserved.

Sec. 2-11.1. - Conflict of Interest and Code of Ethics Ordinance.

- (a) *Designation.* This section shall be designated and known as the "Miami-Dade County Conflict of Interest and Code of Ethics Ordinance." This section shall be applicable to all County personnel as defined herein, and shall also constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers, autonomous personnel, quasi-judicial personnel, advisory personnel, departmental personnel and employees of municipalities in the County insofar as their individual relationships with their own municipal governments are concerned. References in the section to County personnel shall therefore be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to. (Ord. No. 72-82, § 1, 11-21-72; Ord. No. 73-27, § 1, 3-20-73)
- (b) *Definitions.* For the purposes of this section the following definitions shall be effective:
- (1) The term "Commissioners" shall refer to the Mayor and the members of the Board of County Commissioners as duly constituted from time to time.
 - (2) The term "autonomous personnel" shall refer to the members of semi-autonomous authorities, boards, and agencies as are entrusted with the day to day policy setting, operation and management of certain defined County functions or areas of responsibility, even though the ultimate responsibility for such functions or areas rests with the Board of County Commissioners.
 - (3) The term "quasi-judicial personnel" shall refer to the members of the Community Zoning Appeals Board and such other boards and agencies of the County as perform quasi-judicial functions.
 - (4) The term "advisory personnel" shall refer to the members of those County advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the Board of County Commissioners.
 - (5) The term "departmental personnel" shall refer to the Manager, his or her department heads, the County Attorney and all Assistant County Attorneys.
 - (6) The term "employees" shall refer to all other personnel employed by the County.
 - (7) The term "compensation" shall refer to any money, gift, favor, thing or value or financial benefit conferred in return for services rendered or to be rendered.
 - (8) The term "controlling financial interest" shall refer to ownership, directly or indirectly, to ten (10) percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten (10) percent or more in a firm, partnership, or other business entity.
 - (9) The term "immediate family" shall refer to the spouse, domestic partner, parents, stepparents, children and stepchildren of the person involved.
 - (10) The term "transact any business" shall refer to the purchase or sale by the County of specific goods or services for a consideration.
 - (11) The term "Ethics Commission" shall refer to the Miami-Dade County Commission on Ethics and Public Trust.
 - (12) The term "domestic partner" shall mean a person who is a party to a valid domestic partnership relationship as described in section 11A-72(b)(1),(2), (3), (4) and (6) of the Code.
 - (13) The term "contract staff" shall mean any employee and/or principal of an independent contractor, subcontractor (of any tier), consultant or sub-consultant (of any tier), designated in a contract with the County as a person who shall be required to comply with the provisions of Subsections 2-11.1(g), (h), (i), (j), (l), (m), (n) and (o) of the Conflict of Interest and Code of Ethics Ordinance. Prior to determining whether to designate a person as contract staff in a RFP, RFQ, bid or contract, the Mayor or his or her designee shall seek a recommendation from the Executive Director of the Ethics Commission.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 73-23, § 1, 3-20-73; Ord. No. 86-24, § 3, 4-1-86; Ord. No. 10-48, § 1, 7-8-10)

(c) *Prohibition on transacting business within the County.*

- (1) No person included in the terms defined in subsection (b)(1) through (6) and in subsection (b)(9) shall enter into any contract or transact any business, except as provided in subsections (c)(2) through (c)(6) in which he or she or a member of his or her immediate family has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Willful violation of this subsection shall constitute malfeasance in office and shall effect forfeiture of office or position.
- (2) County employees' limited exclusion from prohibition on contracting with the county. Notwithstanding any provision to the contrary herein, subsections (c) and (d) shall not be construed to prevent any employee as defined by subsection (b)(6) [excluding departmental personnel as defined by subsection (b)(5)] or his or her immediate family as defined by subsection (b)(9) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County, as long as (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.
- (3) Limited exclusion from prohibition on autonomous personnel, advisory personnel and quasi-judicial personnel contracting with county. Notwithstanding any provision to the contrary herein, subsections (c) and (d) shall not be construed to prohibit any person defined in subsection (b)(2), (b)(3) and (b)(4) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the board member or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County. However, any person defined in subsection (b)(2), (b)(3) and (b)(4) is prohibited from contracting with any agency or department of Miami-Dade County subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board of which the person is a member.
- (4) Any person defined in subsections (b)(2) through (b)(4) and subsection (b)(6) shall seek a conflict of interest opinion from the Miami-Dade County Commission on Ethics and Public Trust ("the Ethics Commission") prior to submittal of a bid, response, or application of any type to contract with the County by the person or his or her immediate family. A request for a conflict of interest opinion shall be made in writing and shall set forth and include all pertinent facts and relevant documents. If the Ethics Commission finds that the requirements of this section pertaining to exclusions for persons defined in subsections (b)(2) through (b)(4) and subsection (b)(6) are not met and that the proposed transaction would create a conflict of interest, the person defined in subsections (b)(2), (b)(3), (b)(4) or (b)(6) may request a waiver from the Board of County Commissioners within ten (10) days of the Ethics Commission opinion by filing a notice of appeal to the Ethics Commission. The Ethics Commission shall forward the notice of appeal and its opinion and any pertinent documents to the Clerk of the Board of County Commissioners (the "Clerk") forthwith. The Clerk shall place the request on the commission agenda for consideration by the Board. The Board of County Commissioners may grant a waiver upon an affirmative vote of two-thirds (2/3) of the entire Board of County Commissioners, after public hearing, if it finds that the requirements of this ordinance pertaining to the exclusion for a County employee from the Code have been met and that the proposed transaction will be in the best interest of the County. The Board of County Commissioners may, as provided in subsection (c)(6), grant a waiver to any person defined in subsection (b)(2) through (b)(4) regarding a proposed transaction. Such findings shall be included in the minutes of the board. This subsection shall be applicable only to proposed transactions, and the Board may in no case ratify a transaction entered into in violation of this subsection.

If the affected person or his or her immediate family member chooses to respond to a solicitation to contract with the County, such person shall file with the Clerk a statement in a form satisfactory to the Clerk disclosing the person's interest or the interest of his or her immediate family in the proposed contract and the nature of the intended contract at the same time as or before submitting a bid, response, or application of any type to contract with the County. Along with the disclosure form, the affected person shall file with the Clerk a copy of his or her request for an Ethics Commission opinion and any opinion or waiver from the Board. Also, a copy of the request for a conflict of interest opinion from the Ethics Commission and any opinion or waiver must be submitted with the response to the solicitation to contract with the County.

Notwithstanding any provision herein to the contrary, the County and any person or agency acting for Miami-Dade County shall not award a contract to any person defined in subsections (b)(2) through (b)(4) and subsection (b)(6) or his or her immediate family individually or through a firm, corporation, partnership or business entity in which the person or any member of his or her immediate family has a controlling financial interest, unless the Ethics Commission has rendered an opinion that entering the contract would not be a conflict of interest or the Board waives the conflict in accordance with the provisions of this ordinance.

The County Manager is directed to include language in all solicitations for county contracts advising persons defined in subsections (b)(2) through (b)(4) and subsection (b)(6) of the applicable conflict of interest code provisions, the provisions of this ordinance, including the requirement to obtain an Ethics Commission opinion and make disclosure, and the right to seek a legal opinion from the State of Florida Ethics Commission regarding the applicability of state law conflict of interest provisions.

- (5) Nothing herein shall prohibit or make illegal (1) the payment of taxes, special assessments or fees for services provided by County government; (2) the purchase of bonds, anticipation notes or other securities that may be issued by the County through underwriters or directly from time to time; (3) the participation of the persons included in the terms defined in subsection (b)(1) through (6), except for employees of the general services administration and their "immediate family" as defined in (b)(9), in the public auction process utilized by the County for the disposal of surplus motor vehicles; (4) the purchase of surplus personal property, pursuant to administrative order, by persons defined in subsection (b)(1) through (6) and (9); (5) an application for direct assistance from the Miami-Dade County Department of Housing and Urban Development or an application to participate in a program administered by the Department of Special Housing has been submitted by an applicant who is a County person as defined in subsection (b) and who would but for this section be eligible for such assistance from said department; provided, however, that the exception provided in this paragraph shall not extend to an employee of the Miami-Dade County Department of Housing and Urban Development or the Department of Special Housing who participates in the administration of said programs; or (6) and application to participate in a single-family mortgage loan program sponsored by the Housing Finance Authority of Miami-Dade County, has been submitted by a County person as defined in subsection (b), and would but for this section be eligible for participation in said program; provided, however, that the exception provided in this paragraph shall not extend to an employee of the Miami-Dade County Finance Department who participates in the administration of said single-family mortgage loan program.
- (6) Extension of waiver to county commissioners, autonomous personnel, quasi-judicial personnel, and advisory personnel. The requirements of this subsection may be waived for a particular transaction only by affirmative vote of two-thirds of the entire Board of County Commissioners, after public hearing. Such waiver may be affected only after findings by two-thirds of the entire Board that:
 - (1) An open-to-all sealed competitive bid has been submitted by a County person as defined in subsection (b)(2), (3) and (4), or
 - (2) The bid has been submitted by a person or firm offering services within the scope of practice of architecture, professional engineering, or registered land surveying as defined by the laws of the State of Florida and pursuant to the provisions of the Consultants' Competitive Negotiation Act, and when the bid has been submitted by a County person defined in subsection (b)(2), (3) and (4), or
 - (3) The property or services to be involved in the proposed transaction are unique and the County cannot avail itself of such property or services without entering a transaction which would violate this subsection but for waiver of its requirements, or
 - (4) That the property or services to be involved in the proposed transaction are being offered to the County at a cost of no more than 80 percent of fair market value based on a certified appraisal paid for by the provider, and
 - (5) That the proposed transaction will be to the best interest of the County.

Such findings shall be spread on the minutes of the Board. This subsection shall be applicable only to prospective transactions, and the Board may in no case ratify a transaction entered in violation of this subsection.

Provisions cumulative. This subsection shall be taken to be cumulative and shall not be construed to amend or repeal any other law pertaining to the same subject matter. (Ord. No. 72-82, § 1, 11-21-72; Ord. No. 73-24, § 1, 3-20-73; Ord. No. 73-45, § 1, 5-1-73; Ord. No. 75-91, § 1, 11-4-75; Ord. No. 75-119, § 1, 12-16-75; Ord. No. 79-85, § 1, 10-16-79; Ord. No. 80-33, § 1, 5-6-80; Ord. No. 85-84, § 1, 10-1-85; Ord. No. 85-98, § 1, 11-5-85; Ord. No. 87-58, § 1, 9-1-87; Ord. No. 88-102, § 1, 10-18-88; Ord. No. 91-113, § 1, 10-1-91; Ord. No. 00-1, § 1, 1-13-00; Ord. No. 00-151, § 1, 11-28-00)

- (d) *Further prohibition on transacting business with the County.* No person included in the terms defined in subsections (b)(1) through (6) and in subsection (b)(9) shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or any member of his immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. The remaining provisions of subsection (c) will also be applicable to this subsection as though incorporated herein by recitation.

Additionally, no person included in the term defined in subsection (b)(1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall: (1) announce publicly at the meeting the nature of the conflict before the matter is heard; (2) absent himself or herself from the Commission chambers during that portion of the meeting when the matter is considered; and (3) file a written disclosure of the nature of the conflict with the Clerk of the Board within 15 days after the vote. The filing of the State of Florida form prescribed for written disclosure of a voting conflict shall constitute compliance with this subsection. (Ord. No. 72-82, § 1, 11-21-72; Ord. No. 73-45, § 2, 5-1-73; Ord. No. 86-11, § 1, 2-18-86; Ord. No. 86-24, § 1, 4-1-86; Ord. No. 16-47, 5-17-16)

(e) *Gifts.*

- (1) *Definition.* The term "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.
- (2) *Exceptions.* The provisions of subsection (e)(1) shall not apply to:
 - a. Political contributions specifically authorized by State law;
 - b. Gifts from relatives or members of one's household;
 - c. Awards for professional or civic achievement;
 - d. Material such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature;
 - e. Gifts solicited by County employees or departmental personnel on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business;
 - f. Gifts solicited by Commissioners on behalf of the County in the performance of their official duties for use solely by the County in conducting its official business;
 - g. Gifts solicited by Commissioners, or their staff members, on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner, nor his or her staff receives any compensation as a result of the solicitation. As used in this subsection, a "nonprofit organization" shall mean any entity described in section 501(c)(3) of the Internal Revenue Code (the "Code") that is tax exempt under section 501(a) of the Code. As used in this subsection, "compensation" means any money, gift, favor, political contribution, thing of value or other financial benefit.
- (3) *Prohibitions.* A person described in subsection (b)(1) through (6) shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give or agree to give to any person included in the term defined in subsection (b)(1) through (6) or for any person included in the term defined in subsection (b)(1) through (6) to accept or agree to accept from another person or entity, any gift for or because of:
 - a. An official public action taken, or to be taken, or which could be taken;
 - b. A legal duty performed or to be performed, or which could be performed; or
 - c. A legal duty violated or to be violated, or which could be violated by any person included in the term defined in subsection (b)(1).
- (4) *Disclosure.* Any person included in the term defined in subsection (b)(1) through (6) shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred dollars (\$100.00). Said disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for "local officers" with the Clerk of the Board of County Commissioner simultaneously with the filing of the form with the Secretary of State.

(Ord. No. 78-82, § 1, 11-21-72; Ord. No. 86-25, § 1, 4-1-86; Ord. No. 87-70, § 1, 10-20-87; Ord. No. 91-62, § 1, 6-4-91; Ord. No. 99-124, § 1, 2-11-1; Ord. No. 99-145, § 1, 10-19-99; Ord. No. 10-48, § 1, 7-8-10)

- (f) *Compulsory disclosure by employees of firms doing business with the County.* Should any person included in the terms defined in subsections (b)(1) through (6) be employed, either himself or herself or through a member of his or her immediate family, by a corporation, firm, partnership or business entity in which he or she does not have a controlling financial interest, and should the said corporation, firm, partnership or business entity have substantial business commitments to or from the County or any County agency, or be subject to direct regulation by the County or a County agency, then said person shall file a sworn statement disclosing such employment and interest with the Clerk of the Circuit Court in and for Miami-Dade County.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 10-48, § 1, 7-8-10)

- (g) *Exploitation of official position prohibited.* No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 10-48, § 1, 7-8-10)

- (h) *Prohibition on use of confidential information.* No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall accept employment or engage in any business or professional activity which he or she might reasonably expect would require or induce him or her to disclose confidential information acquired by him or her by reason of his or her official position, nor shall he or she in fact ever disclose confidential information garnered or gained through his or her official position with the County, nor shall he or she ever use such information, directly or indirectly, for his or her personal gain or benefit.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 10-48, § 1, 7-8-10)

- (i) *Financial disclosure.*

- (1) All persons and firms included within subsections (a) and (b)(2), (3) and (4) of this section shall file, no later than 12:00 noon of July 1st of each year including the July 1st following the last year that person is in office or held such employment, one (1) of the following:
 - a. A copy of that person's or firm's current federal income tax return; or
 - b. A current certified financial statement on a form of the type approved for use by State or national banks in Florida listing all assets and liabilities having a value in excess of one thousand dollars (\$1,000.00) and a short description of each; or
 - c. An itemized source of income statement, under oath and on a form approved by the County for said purpose.

Compliance with the financial disclosure provisions of Chapter 112 (Part II), Florida Statutes, as amended, or with the provisions of Article II, Section 8 of the Florida Constitution, as amended by the voters on November 2, 1976, and any general laws promulgated thereunder, shall constitute compliance with this section.
- (2) County and municipal personnel. The following County personnel shall comply with the filing requirements of subsection (i)(1) above: The Mayor and members of the Board of County Commissioners; County Attorney and Assistant County Attorneys; County Manager, Assistant County Manager(s); Special Assistant(s) to the County Manager; heads or directors of County departments and their assistant or deputy department heads; employees of the Miami-Dade Police with the rank of captain, major and chief; Building and Zoning Inspectors. References herein to specified County personnel and Boards shall be applicable to municipal personnel and Boards that serve in comparable capacities to the County personnel and Boards referred to.
- (3) Candidates for County and municipal office. All candidates for County and municipal elective office shall comply with the filing requirements of subsection (i)(1) above at the same time that candidate files qualifying papers.
- (4) Consultants. All persons or firms providing professional services as defined by Section 2-10.4(1)(a) and (b) of the Code of Miami-Dade County, to Miami-Dade County or any municipalities, their agencies, or instrumentalities, shall comply with the filing requirements of subsection (i)(1) above within ninety (90) days of the effective date hereof. All persons or firms subsequent to the effective date of this section, which engage in competitive negotiation with Miami-Dade County or any of its municipalities, their agencies or instrumentalities under and pursuant to Section 2-10.4 of the Code of Miami-Dade County shall comply with the reporting requirements of subsection (i)(1) of this section within thirty (30) days of execution of a contract arising out of said competitive negotiations and prior to any payments from said County, municipalities or other agencies or instrumentalities. Failure to comply with the terms hereof by such persons or firms shall render existing contracts voidable and shall automatically void any contracts negotiated and executed subsequent to the effective date of this section where the required information is not furnished within thirty (30) days of the execution of said contract as noted herein.
- (5) Reports; filing. All documents required to be filed hereunder by County persons or consultants shall be filed with the supervisor of elections. Documents required to be filed hereunder by municipal persons or consultants shall be filed with the municipal Clerk of that entity.
- (6) Public disclosure. All documents filed pursuant to this subsection shall constitute public records within the meaning of Chapter 119, Florida Statutes.
- (7) Construction. The construction of this subsection shall be considered as supplemental to and not in substitution of any requirements of Chapter 112, Florida Statutes, or any rules and regulations promulgated thereunder.

(Ord. No. 77-13, § 1, 3-1-77; Ord. No. 83-18, § 1, 4-19-83; Ord. No. 84-39, § 1, 5-15-84)

- (j) *Conflicting employment prohibited.* No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 77-13, § 2, 3-1-77; Ord. No. 10-48, § 1, 7-8-10)

- (k) *Prohibition on outside employment.*

- (1) No person included in the terms defined in subsections (b)(5) [departmental personnel] and (6) [employees] shall receive any compensation for his or her services as an officer or employee of the County, from any source other than the County, except as may be permitted by Section 2-11 of this Code of Ordinances.
- (2) All full-time County and municipal employees engaged in any outside employment for any person, firm, corporation or entity other than Miami-Dade County, or the respective municipality, or any of their agencies or instrumentalities, shall file, under oath, an annual report indicating the source of the outside employment, the nature of the work being done pursuant to same and any amount or types of money or other consideration received by the employee from said outside employment. Said County employee's reports shall be filed with the supervisor of elections no later than 12:00 noon on July 1st of each year, including the July 1st following the last year that person held such employment. Municipal employee reports shall be filed with the Clerk of their respective municipalities. Said reports shall be available at a reasonable time and place for inspection by the public. The County Manager or any city manager may require monthly reports from individual employees or groups of employees for good cause.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 77-13, § 3, 3-1-77; Ord. No. 77-79, § 1, 1-11-77; Ord. No. 77-87, § 1, 12-6-77; Ord. No. 83-18, § 2, 4-19-83; Ord. No. 84-39, § 2, 5-15-84; Ord. No. 10-48, § 1, 7-8-10)

- (l) *Prohibited investments.* No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) shall have personal investments in any enterprise, either himself, herself, or through a member of his or her immediately family, which will create a substantial conflict between his or her private interests and the public interest.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 10-48, § 1, 7-8-10)

- (m) *Certain appearances and payment prohibited.*

- (1) No person included in the terms defined in subsections (b)(1), (5), (6) and (13) [commissioners, the Mayor, departmental personnel, employees and contract staff] shall appear before any County Board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person. Nor shall such person appear in any court or before any administrative tribunal as counsel or legal advisor to a party who seeks legal relief from the County or a County agency through the suit in question.
- (2) No person included in the terms defined in subsections (b)(2), (3) and (4) [autonomous personnel, quasi-judicial personnel, and advisory personnel] shall appear before the County board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third party, who has applied for or is seeking some benefit from the County board or agency on which such person serves, in connection with the particular benefit by the third party. Nor shall such person appear in any court or before any administrative tribunal as counsel or legal advisor to a third party who seeks legal relief from the County board or agency on which such person serves through the suit in question. However, this section shall not prohibit an architect serving without compensation on the Miami-Dade County Board of Energy Regulation or on any architectural Board, whose sole function is to pass on the aesthetics of plans submitted, from submitting plans on behalf of a client so long as such member makes known his or her representation of the applicant and disqualifies himself or herself from speaking or voting or otherwise participating on such application.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 73-25, § 1, 3-20-73; Ord. No. 73-51, § 1, 5-15-73; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 79-39, § 1, 6-19-79; Ord. No. 10-48, § 1, 7-8-10)

- (n) *Actions prohibited when financial interests involved.* No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest. A financial interest is defined as a special financial interest, direct or indirect, as that term is used in Section 4.03 of the County's Charter, or as a financial interest as defined in Section 769 of the Restatement of the Law of Torts as an investment or something in the nature of an investment. This section shall not prohibit any official, officer, employee or person from taking official action (1) to promote tourism or downtown development or redevelopment within the County or any portion thereof, or (2) to authorize the expenditure of public funds for promoting tourism or downtown development or redevelopment, so long as no such authorized public funds are to be paid to such person or a member of his or her immediate family or any business in which he or she or any member of his or her immediate family has a financial interest.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 73-50, § 1, 5-15-73; Ord. No. 75-76, § 1, 9-17-75; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 10-48, § 1, 7-8-10)

- (o) *Acquiring financial interests.* No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) shall acquire a financial interest in a project, business entity or property at a time when he or she believes or has reason to believe that the said financial interest will be directly affected by his or her official actions or by official actions by the County or County agency of which he or she is an official, officer, employee or contract staff.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 10-48, § 1, 7-8-10)

- (p) *Recommending professional services.* No person included in the terms defined in subsections (b)(1) through (6) may recommend the services of any lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the County or any of its agencies, provided that such recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other County officials, officers or employees.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 77-13, § 4, 3-1-77)

- (q) *Continuing application after county service.*

- (1) No person who has served as an elected county official, i.e., mayor, county commissioner, or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager, department director, departmental personnel or employee shall, for a period of two (2) years after his or her county service or employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect. Additionally, no person who has served as a community council member shall, for a period of two (2) years after his or her county service or employment has ceased, lobby, with regard to any zoning or land use issue, any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect. Nothing contained in this Subsection (q)(1) shall prohibit any individual included within the provisions of this subsection from submitting a routine administrative request or application to a county department or agency during the two-year period after his or her county service has ceased.
- (2) The provisions of this Subsection (q) shall not apply to officials, departmental personnel or employees who become employed by governmental entities, 501(c)(3) non-profit entities or educational institutions or entities, and who lobby on behalf of such entities in their official capacities.
- (3) The provisions of this section shall apply to all individuals as described in Subsection (q)(1) who leave the county after the effective date of the ordinance from which this section derives.
- (4) Any former county officer, departmental personnel or employee who has left the county within two (2) years prior to the effective date of this ordinance and has entered into a lobbying contract prior to the effective date of this ordinance shall, for a period of two (2) years after his or her county service or employment has ceased, comply with Subsection (q) as it existed prior to the effective date of the ordinance from which this section derives and as modified by this Subsection (q)(4) when lobbying pursuant to said contract. No former county officer, departmental personnel or employee who has left the county within two (2) years prior to the effective date of the ordinance from which this section derives shall for a period of two (2) years after his or her county service or employment has ceased enter into a lobbying contract to lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has a direct and substantial interest; and in which he or she participated directly or indirectly as an officer, departmental personnel or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, during his or her county service or employment. As used herein, a person participated "directly" where he or she was substantially involved in the particular subject matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, during his or her county service or employment. As used herein, a person participated "indirectly" where he or she knowingly participated in any way in the particular subject matter through decision, approval, disapproval, recommendation, the rendering of legal advice, investigation or otherwise, during his or her county service or employment. Former county officers, departmental personnel and employees who have left the county within two (2) years prior to the effective date of the ordinance from which this section derives shall execute an affidavit on a form prepared by the Office of the Inspector General prior to lobbying any county officer, departmental personnel or employee stating that the requirements of this section do not preclude said person from lobbying any officer, departmental personnel or employee of the county. The Inspector General shall verify the accuracy of each affidavit executed by former county officers, departmental personnel or employees.
- (5) Any individual who is found to be in violation of this Subsection (q) shall be subject to the penalties provided in either Subsection (u)(1) or Subsection (u)(2).

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 99-2, § 1, 1-21-99)

- (f) *Ethics Commission to render opinions on request.* Whenever any person included in the terms defined in subsection (b)(1) through (6), (b)(9) and (b)(13) is in doubt as to the proper interpretation or application of this Conflict of Interest and Code of Ethics Ordinance as to himself or herself, or whenever any person who renders services to the County is in doubt as to the applicability of the said ordinance as to himself or herself, he or she may submit to the Ethics Commission a full written statement of the facts and questions he or she has. The Ethics Commission shall then render an opinion to such person and shall publish these opinions without use of the name of the person advised unless such person requests the use of his or her name. Any person included in the term defined in subsection (b)(1) (i.e., Mayor or Commissioner) who is employed or retained by an entity that receives County funds or is under contract with the County shall, within sixty (60) days after (a) being retained or employed by the entity, or (b) becoming aware of the entity's receipt of County funds or of the entity's contract with the County, whichever is later, seek an opinion from the Ethics Commission or the Executive Director of the Ethics Commission regarding the applicability of the Conflict of Interest and Code of Ethics Ordinance. Any person included in the term defined in subsection (b)(1) who is employed or retained by an entity that receives County funds or is under contract with the County and has received an opinion from the Ethics Commission or the Executive Director of the Ethics Commission prior to the effective date of this ordinance regarding the applicability of the Conflict of Interest and Code of Ethics Ordinance to himself or herself shall not be required to seek another opinion from the Ethics Commission.

(Ord. No. 73-26, § 1, 3-20-73; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 97-105, § 2, 7-8-97; Ord. No. 10-48, § 1, 7-8-10; Ord. No. 12-22, § 1, 4-3-12)

(s) *Lobbying.*

- (1) (a) As used in this section, "County personnel" means those County officers and employees specified in Section 2-11.1(i)(2) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.
- (b) As used in this section, "Lobbyist" means all persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the County Commission; (2) any action, decision, recommendation of the County Manager or any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee. "Lobbyist" specifically includes the principal as well as any employee whose normal scope of employment includes lobbying activities. The term "Lobbyist" specifically excludes the following persons: attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications; expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings; any person who only appears as a representative of a neighborhood association without compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item; any person who only appears as a representative of a not-for-profit community based organization for the purpose of requesting a grant without special compensation or reimbursement for the appearance; and employees of a principal whose normal scope of employment does not include lobbying activities.
- (2) All lobbyists shall register with the Clerk of the Board of County Commissioners within five (5) business days of being retained as a lobbyist or before engaging in any lobbying activities, whichever shall come first. Every person required to so register shall:
 - (a) Register on forms prepared by the Clerk;
 - (b) State under oath his or her name, business address and the name and business address of each person or entity which has employed said registrant to lobby. If the lobbyist represents a corporation, the corporation shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five (5) percent or more ownership interest in such corporation, partnership, or trust. Registration of all lobbyists shall be required prior to January 15 of each year and each person who withdraws as a lobbyist for a particular client shall file an appropriate notice of withdrawal. The fee for annual registration shall be four hundred and ninety dollars (\$490.00). Every registrant shall be required to state the extent of any business or professional relationship with any current person described in subsection (b)(1). The registration fees required by this subsection shall be deposited by the Clerk into a separate account and shall be expended for the purpose of recording, transcribing, administration and other costs incurred in maintaining these records for availability to the public. Notwithstanding the foregoing, fifteen (15) percent of future funds generated by lobbyist registration fees after the effective date of this ordinance shall be deposited into a separate account, and shall be expended by the Ethics Commission for the purposes of educational outreach, the rendering of advisory opinions and enforcement of the provisions of Section 2-11.1(s) relating to lobbyists. There shall be no fee required for filing a notice of withdrawal and the Board of County Commissioners may, in its discretion, waive the registration fee upon a finding of financial hardship.
 - (c) Prior to conducting any lobbying, all principals must file a form with the Clerk of the Board of County Commissioners, signed by the principal or the principal's representative, stating that the lobbyist is authorized to represent the principal. The principal and the lobbyist must also submit a joint affidavit stating that the principal has not offered and the lobbyist has not agreed to accept any contingency or success fees as defined in subsection (s)(7). Failure of a principal to file the required forms may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form with the Clerk of the Board at the point in time at which a lobbyist is no longer authorized to represent the principal.
 - (d) Each lobbyist shall, within sixty (60) days after registering as a lobbyist, submit to the Clerk of the Board a certificate of completion of an ethics course offered by the Miami-Dade County Commission on Ethics and Public Trust ("Ethics Course"). Lobbyists who have completed the initial Ethics Course mandated by the preceding sentence and have continuously registered as a lobbyist thereafter shall be required to complete a refresher Ethics Course every two years. Each lobbyist who has completed a refresher Ethics Course shall submit to the Clerk of the Board a certificate of completion within sixty (60) days after registering as a lobbyist. The Ethics Course shall include, but not be limited to, a review of the following topics: the Conflict of Interest and Code of Ethics Ordinance; the Sunshine Law; and the Public Records Law. The fee for the Ethics Course shall be one hundred dollars (\$100.00). The registration fees required by this subsection shall be deposited into a separate account, and shall be expended by the Ethics Commission for Ethics Courses and related costs. The requirements of this subsection relating to the Ethics Course shall not be applicable to any municipal lobbyist in Miami-Dade County unless said municipality has adopted an ordinance providing for ethics training of lobbyists, and has entered into an interlocal agreement with the County authorizing the Ethics Commission to provide the Ethics Course provided for in this subsection. The Executive Director of the Ethics Commission may waive the Ethics Course requirement for a particular lobbyist when he or she determines that the lobbyist has taken an initial or refresher Ethics Course offered by a municipality which satisfies the requirements of this subsection.
- (3) (a) Any public officer, employee or appointee who only appears in his or her official capacity shall not be required to register as a lobbyist.
- (b) Any person who only appears in his or her individual capacity for the purpose of self-representation without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item, shall not be required to register as a lobbyist. A principal of any corporation, partnership or other entity who appears as a lobbyist on behalf of that entity, without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item, shall register with the Clerk as required by this subsection, but shall not be required to pay any registration fees.
- (4) Any person who only appears as a representative of a not-for-profit corporation or entity (such as a charitable organization, or a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item, shall register with the Clerk as required by this subsection, but, upon request, shall not be required to pay any registration fees. Any principal who only appears as a representative of a certified Micro Enterprise, as defined in Section 2-8.1.1.1 of the Code, as a representative of a certified Level I Community Small Business Enterprise, as defined in Section 10-33.02 or as a representative of a certified Tier 1 Community Business Enterprise, as defined in Section 2-10.4.01, without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item, shall register with the Clerk as required by this subsection, but, upon request, shall not be required to pay any registration fees.
- (5) Any person who appears as a representative for an individual or firm for an oral presentation before a county certification, evaluation, selection, technical review or similar committee, shall list on an affidavit provided by the County, all individuals who may make a presentation. The affidavit shall be filed by staff with the Clerk's office at the time the proposal is submitted. For the purpose of this subsection only, the listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any committee on behalf of an individual or firm unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or unless he or she is registered with the Clerk's office and has paid all applicable fees.
- (6) (a) On July 1 of each year, the lobbyist shall submit to the Clerk of the Board of County Commissioners a signed statement under oath, as provided herein, listing all lobbying expenditures in excess of twenty-five dollars (\$25.00) for the preceding calendar year. A statement shall not be filed if there have been no expenditures during the reporting period. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events.
- (b) The Clerk of the Board of County Commissioners shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed as provided in subsection (s)(9), a fine of fifty dollars (\$50.00) per day shall be assessed for reports filed after the due date. Where a fine of fifty dollars (\$50.00) per day is assessed, the Ethics Commission shall not impose a fine as provided in subsection (2). Any lobbyist who fails to file the required expenditure report by September 1 shall be automatically suspended from lobbying until all fines are paid unless the fine has been appealed to the Ethics Commission.
- (c) The Clerk of the Board of County Commissioners shall notify the Commission on Ethics and Public Trust of the failure of a lobbyist or principal to file a report and/or pay the assessed fines after notification.

- (d) A lobbyist or principal may appeal a fine and may request a hearing before the Commission on Ethics and Public Trust. A request for a hearing on the fine must be filed with the Commission on Ethics and Public Trust within fifteen (15) calendar days of receipt of the notification of the failure to file the required disclosure form. The Commission on Ethics and Public Trust shall have the authority to waive the fine, in whole or part, based on good cause shown. The Commission on Ethics and Public Trust shall have the authority to adopt rules of procedure regarding appeals from the Clerk of the Board of County Commissioners.
- (7) No person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) an ordinance, resolution, action or decision of the County Commission; (2) any action, decision or recommendation of the County Manager or any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee.
- (8) The Clerk shall publish logs on a quarterly and an annual basis reflecting the lobbyist registrations which have been filed in accordance with this subsection (s). All logs required by this ordinance shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature pursuant to Section 11.045, Florida Statutes.
- (9) The Ethics Commission shall investigate any person engaged in lobbying activities who may be in violation of this subsection (s). In the event that a violation is found to have been committed the Ethics Commission may, in addition to the penalties set forth in subsection (z), prohibit such person from lobbying before the County Commission or any committee, board or personnel of the County as provided herein.

Every lobbyist who is found to be in violation of this section shall be prohibited from registering as a lobbyist or lobbying in accordance with the following schedule:

1st violation for a period of 90 days from the date of determination of violation;

2nd violation for a period of one (1) year from the date of determination of violation;

3rd violation for a period of five (5) years from the date of determination of violation;

A bidder or proposer shall be subject to the debarment provisions of Section 10-38 of the Code of Miami-Dade County as if the bidder or proposer were a contractor where the bidder or proposer has violated this section, either directly or indirectly or any combination thereof, on three (3) or more occasions. As used herein, a "direct violation" shall mean a violation committed by the bidder or proposer and an "indirect violation" shall mean a violation committed by a lobbyist representing said bidder or proposer. A contract entered into in violation of this section shall also render the contract voidable. The County Manager shall include the provisions of this subsection in all County bid documents, RFP, RFQ, CBO and CDBG applications; provided, however, the failure to do so shall not render any contract entered into as the result of such failure illegal per se.

- (10) All members of the County Commission, and all County personnel, shall be diligent to ascertain whether persons required to register pursuant to this subsection have been complied. Commissioners or County personnel may not knowingly permit a person who is not registered pursuant to this subsection to lobby the Commissioner, or the relevant committee, board or County personnel.
- (11) Except as otherwise provided in subsection (s)(9), the validity of any action or determination of the Board of County Commissioners or County personnel, board or committee shall not be affected by the failure of any person to comply with the provisions of this subsection (s).

(Ord. No. 86-24, § 1, 4-1-86; Ord. No. 91-22, § 1, 2-19-91; Ord. No. 92-27, § 1, 4-21-92; Ord. No. 95-21, § 1, 2-7-95; Ord. No. 98-73, § 1, 6-2-98; Ord. No. 98-76, § 1, 6-2-98; Ord. No. 00-19, § 1, 2-8-00; Ord. No. 01-93, § 1, 5-22-01; Ord. No. 01-162, § 1, 10-23-01; Ord. No. 10-03, § 1, 1-21-10; Ord. No. 10-04, § 1, 1-21-10; Ord. No. 10-34, § 1, 6-3-10; Ord. No. 10-56, § 1, 9-21-10; Ord. No. 12-10, § 1, 3-6-12; Ord. No. 12-63, § 1, 9-6-12)

(l) *Cone of Silence.*

1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on:

- (i) Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Manager and his or her staff;
- (ii) Any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff;
- (iii) Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefor;
- (iv) Any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefor;
- (v) Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs; and
- (vi) Any communication regarding a particular RFP, RFQ, or bid between any member of the County's professional staff and any member of the selection committee therefor.

The County Manager and the Chairperson of the selection committee may communicate about a particular selection recommendation, but only after the committee has submitted an award recommendation to the manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change as well as the reasons for such change shall be described in writing and filed by the Manager with the Clerk of the Board and be included in any recommendation submitted by the Manager to the Board of County Commissioners. Notwithstanding the foregoing, the Cone of Silence shall not apply to:

- (i) Competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste Departments, Cultural Affairs and Tourist Development Councils and the Department of Environmental Resources Management;
- (ii) Communications with the County Attorney and his or her staff;
- (iii) Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Department of Business Development regarding small business and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs;
- (iv) Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or procedure;
- (v) Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County Manager makes his or her written recommendation;
- (vi) Any emergency procurement of goods or services pursuant to Administrative Order 3-2;
- (vii) Communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

- (viii) Communications between a potential vendor, service provider or bidder and employees of the Department of Procurement Management or other department identified in the solicitation document as the issuing department; and
 - (ix) Consultations by employees of the Department of Procurement Management with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress.
- (b) Procedure.
- (i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Manager or his or her designee shall provide for public notice of the Cone of Silence. The County Manager shall issue a written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.
 - (ii) The Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be reimposed until such time as the Manager makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Manager has the delegated authority to make under Sec. 2-8.1(b) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars (\$100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of A.O. 3-21 for such contracts or purchases involving the expenditure of over \$25,000 up to \$100,000; or (iii) at the time the award recommendation is issued in accordance with Section IV of A.O. 3-21 for contracts and purchases involving the expenditure of \$25,000 or less.
 - (iii) While the Cone of Silence is in effect, County Staff shall create a written record of any oral communications with potential vendor, service provider, bidder, lobbyist, or consultant related to or regarding a solicitation, bid, proposal, or other competitive process. The record shall indicate the date of such communication, the persons to whom staff communicated, and a general summation of the communication. This subsection applies to all communications made while the Cone of Silence is in effect for a particular solicitation.
- (c) Exceptions.
- (i) The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees duly noticed as a public meeting, recorded contract negotiations and contract negotiation strategy sessions in compliance with the exemption in Florida Statutes Section 286.0113, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communication in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.
 - (ii) The provisions of this ordinance shall also not apply to oral communications at briefings held by county commissioners and the County Mayor or his designee, after the selection committee or other evaluating group makes its recommendation to the County Manager, provided that the briefings are not intended to influence the outcome of the selection committee or other evaluating group's recommendation to the County Manager; provided, however, that this exception shall not apply to outside groups such as lobbyists or representatives of the responding or bidding companies or entities.
2. Audit and IPSIG contracts.
- (a) "Cone of Silence" is hereby defined to mean a prohibition on: (a) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff; (b) any oral communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff. Notwithstanding the foregoing, the Cone of Silence shall not apply to (a) communications with the County Attorney and his or her staff; (b) communications between a potential vendor, service provider or bidder and employees of the Department of Procurement Management or other department identified in the solicitation document as the issuing department; and (c) consultations by employees of the Department of Procurement Management with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress.
 - (b) Except as provided in Subsections 2(c) and 2(d) hereof, a Cone of Silence shall be imposed upon each RFP, RFQ and bid for audit and IPSIG services after the advertisement of said RFP, RFQ or bid. At the time of the imposition of the Cone of Silence, the County Manager or his or her designee shall provide for the public notice of the Cone of Silence. The Cone of Silence shall terminate when the County Manager executes a particular audit or IPSIG contract.
 - (c) Nothing contained herein shall prohibit any bidder or proposer: (i) from making public presentations at duly noticed pre-bid conferences or before duly noticed selection committee meetings; (ii) from engaging in recorded contract negotiations in compliance with the exemption in Florida Statutes Section 286.0113; or (iii) from communicating in writing with any County employee or official for purposes of seeking clarification or additional information from, subject to the provisions of the applicable RFP, RFQ or bid documents. Any recordings made pursuant to this section shall be made available, as a public record, upon the conclusion of the selection committee or negotiation meetings notwithstanding the elapsed time from bid or proposal opening. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to the general public upon request.
 - (d) Nothing contained herein shall prohibit any lobbyist, bidder, proposer or other person or entity from publicly addressing the Board of County Commissioners during any duly noticed public meeting regarding action on any audit or IPSIG contract. The County Manager shall include in any public solicitation for auditing or IPSIG services a statement disclosing the requirements of this ordinance.
3. Penalties. In addition to the penalties provided in Subsections (s) and (v) hereof, violation of this Subsection (t) by a particular bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable. Any person who violates a provision of this ordinance shall be prohibited from serving on a Miami-Dade County competitive selection committee. In addition to any other penalty provided by law, violation of any provision of this ordinance by a Miami-Dade County employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this ordinance shall report such violation to the State Attorney and/or may file a complaint with the Ethics Commission.
4. The requirements of Section 2-11.1(t) shall not apply to any municipality in Miami-Dade County that has adopted an ordinance providing that the cone of silence shall not apply to that municipality. Any municipality that opts out of the requirements of Section 2-11.1(t) shall provide the Ethics Commission with a copy of the ordinance.
5. Within thirty days of a recommendation from a selection committee, the County Mayor or his designee shall either appoint a negotiation committee or take other affirmative action with respect to the solicitation, including but not limited to rejection of proposals or recommendation for award. In the event that negotiations have not commenced within thirty days, or if such other affirmative action has not been taken within thirty days, the County Mayor or his designee shall report such event, and the reasons therefore, to the Board of County Commissioners. Additionally, the County Mayor or his designee shall present the Clerk of the Board with a recommendation for award, or a recommendation to reject proposals, within ninety days from the date a selection committee makes a recommendation. In the event that the County Mayor or his designee has not provided such recommendation to the Clerk of the Board within ninety days, the County Mayor or his designee shall provide a report on the status of the solicitation to the Board of County Commissioners, including the reasons for any delay.

(Ord. No. 98-106, § 1, 7-21-98; Ord. No. 99-1, § 1, 1-21-99; Ord. No. 00-149, § 1, 11-28-00; Ord. No. 01-149, § 1, 9-25-01; Ord. No. 01-150, § 1, 9-25-01; Ord. No. 02-3, § 1, 1-29-02; Ord. No. 04-77, § 1, 4-27-04; Ord. No. 08-111, § 1, 10-7-08)

- (u) *Prohibition on certain business transactions.* No person who is serving as an elected county official or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager or department director shall enter into a business transaction with any person or entity that has a contract with Miami-Dade County or any shareholder, partner, officer, director or employee of said contractor, unless said business transaction is an arm's length transaction made in the ordinary course of business. The provisions of this subsection (u) shall not apply to a business transaction between an elected county official, a member of the staff of an elected county official, the county manager, a senior assistant to the county manager or a department director and a not-for-profit entity. As used herein, a "shareholder" shall mean any person owning ten (10) percent or more of the outstanding capital stock of any corporation. As used herein, "elected county official" shall mean the mayor, county commissioners and community council members. As used herein, "business transaction" shall mean any contract wherein persons either sell, buy, deal, exchange, rent, lend or barter real, personal or intangible property, money or any other thing of value, or render services for value.
- (v) *Voting Conflicts.* Members of Advisory and Quasi-Judicial Boards. No person included in the terms defined in subsections (b)(3) (quasi-judicial personnel) and (b)(4) (advisory personnel) shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.

- (w) *Prohibition on acceptance of travel expenses from county vendors.* Notwithstanding any other provision of this section, no person included in subsections (b)(1)(Mayor and Commissioners), (b)(5)(departmental personnel) or (b)(6) (employees) shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county contractor, vendor, service provider, bidder or proposer. The Board of County Commissioners may waive the requirements of this subsection by a majority vote of the Commission. The provisions of this subsection (w) shall not apply to travel expenses paid by other governmental entities or by organizations of which the County is a member if the travel is related to that membership.
- (x) *Prohibition on county employees and departmental personnel performing contract-related duties.* No person included in subsections (b)(5)(departmental personnel) and (b)(6) (employees), who was previously employed by or held a controlling financial interest in a for-profit firm, partnership or other business entity (hereinafter "business entity") shall, for a period of two years following termination of his or her prior relationship with the business entity, perform any county contract-related duties regarding the business entity, or successor in interest, where the business entity is a county bidder, proposer, service provider, contractor or vendor. As used in this subsection (x), "contract-related duties" include, but are not limited to: service as a member of a county certification, evaluation, selection, technical review or similar committee; approval or recommendation of award of contract; contract enforcement, oversight or administration; amendment, extension or termination of contract; or forbearance regarding any contract. Notwithstanding the foregoing, the provisions of this subsection (x) shall not apply to the County Manager or the Director of Procurement Management.
- (y) *Powers and jurisdiction of Ethics Commission.* The Ethics Commission shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance. Jurisdiction of the Ethics Commission shall automatically extend to Commissioners, the Mayor, autonomous personnel, quasi-judicial personnel, departmental personnel, employees, contract staff, advisory personnel, immediate family, lobbyists as defined in subsections (b) and (s) who are required to comply with the Conflict of Interest and Code of Ethics Ordinance; and any other person required to comply with the Conflict of Interest and Code of Ethics Ordinance including, but not limited to, contractors, consultants and vendors. In the event that the Ethics Commission does not assume jurisdiction as provided in the preceding sentence, the Ethics Commission may refer the complaint to the State Attorney for appropriate action. Notwithstanding the foregoing, the Ethics Commission shall not have jurisdiction to consider an alleged violation of subsection (c) if the requirements of subsection (c) have been waived for a particular transaction as provided therein.

(Ord. No. 10-48, § 1, 7-8-10)

- (z) *Prohibition on participation in settlement negotiations.* Neither the Mayor, a County Commissioner nor any member of their staff shall participate in settlement negotiations of claims or lawsuits, including but not limited to contract scope or compensation adjustments involving the County without prior approval of the Board of County Commissioners.
- (aa) *County Attorney's Office participation in contract adjustments.* County staff shall request the participation of the County Attorney's Office to provide legal advice regarding scope or compensation adjustments which increase by more than one million dollars (\$1,000,000), the value of a construction contract or a contract involving the purchase of goods or services.
- (bb) *Affidavit and Ethics Course.* Each person who is elected to serve as a member of the Board of County Commissioners or as Mayor of Miami-Dade County shall execute an affidavit, on a form prepared by the Ethics Commission, stating that he or she has read the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and agrees to comply with the provisions of said ordinance. Each elected official covered by the requirements of this subsection shall file the required affidavit with the Ethics Commission prior to being sworn into office. Each elected official, as defined in subsection (b)(1), shall, within ninety (90) days after being sworn into office, submit to the Clerk of the Board a certificate of completion of an ethics course offered by the Miami-Dade County Commission on Ethics and Public Trust ("Ethics Course"). Each employee of the County, as defined in subsection (b)(5) and (b)(6), shall within one hundred and eighty (180) days of the effective date of this ordinance or within sixty (60) days after being hired by the County, submit to the Clerk of the Board a certificate of completion of an Ethics Course offered by the Miami-Dade County Commission on Ethics and Public Trust. Employees shall be required to complete a refresher Ethics Course every two years thereafter. Each employee who has completed a refresher Ethics Course shall submit to the Clerk of the Board a certificate of completion. The Ethics Course shall include, but not be limited to, a review of the following topics: the Conflict of Interest and Code of Ethics Ordinance; the Sunshine Law; the Public Records Law and the Citizens' Bill of Rights. The requirements of this subsection (bb) relating to the Ethics Course for employees shall not be applicable to any municipality in Miami-Dade County unless said municipality has adopted an ordinance providing for the Ethics Course, and has entered into an interlocal agreement with the County authorizing the Ethics Commission to provide the Ethics Course provided for in this subsection.

(Ord. No. 12-11, § 1, 3-6-12; Ord. No. 13-50, § 1, 6-4-13)

- (cc) *Penalty.*
 - (1) *Proceeding before Ethics Commission.* A finding by the Ethics Commission that a person has violated this section shall subject said person to an admonition or public reprimand and/or a fine of five hundred dollars (\$500.00) for the first such violation and one thousand dollars (\$1,000.00) for each subsequent violation. Where the Ethics Commission finds that a person has intentionally violated this section and determines that a fine is appropriate, said person shall be subject to a fine of one thousand dollars (\$1,000.00) for the first such violation and two thousand dollars (\$2,000.00) for each subsequent violation. Actual costs incurred by the Ethics Commission, in an amount not to exceed five hundred dollars (\$500.00) per violation, may be assessed where the Ethics Commission has found an intentional violation of this section. The Ethics Commission may also order the person to pay restitution when the person or a third party has received a pecuniary benefit as a result of the person's governed by an administrative order adopted by the County Commission and rules of procedure promulgated by the Ethics Commission.
 - (2) *Prosecution by State Attorney in State court.* Every person who is convicted of a violation of this section in State court shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment in the County Jail for not more than thirty (30) days, or by both such fine and imprisonment.

(Ord. No. 72-82, § 1, 11-21-72; Ord. No. 73-26, § 1, 3-20-73; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 86-24, § 2, 4-1-86; Ord. No. 91-22, § 1, 2-19-91; Ord. No. 92-27, § 1, 4-21-92; Ord. No. 95-21, § 1, 2-7-95; Ord. No. 97-105, § 2, 7-8-97; Ord. No. 98-73, § 1, 6-2-98; Ord. No. 98-76, § 1, 6-2-98; Ord. No. 98-106, § 1, 7-21-98; Ord. No. 98-125, § 1, 9-3-98; Ord. No. 99-150, § 1, 11-2-99; Ord. No. 00-46, § 1, 4-11-00; 00-149, § 1, 11-28-00; Ord. No. 01-199, § 1, 12-4-01; Ord. No. 03-73, § 1, 4-8-03; Ord. No. 03-107, § 1, 5-6-03; Ord. No. 03-140, § 1, 6-3-03; Ord. No. 04-55, § 1, 3-16-04; Ord. No. 04-119, § 1, 6-8-04; Ord. No. 04-204, § 1, 12-2-04; Ord. No. 05-71, § 1, 4-5-05; Ord. No. 06-148, § 1, 10-10-06; Ord. No. 10-11, § 1, 2-2-10; Ord. No. 10-48, § 1, 7-8-10; Ord. No. 13-53, § 1, 6-4-13; Ord. No. 14-96, § 1, 10-7-14)

Editor's note— Ord. No. 72-82, § 1, amended this Code by repealing former § 2-11.1 relative to County officers and employees transacting business with the County and enacted in lieu thereof a new § 2-11.1 as herein set out. Former § 2-11.1 was derived from Ord. No. 59-44, §§ 2—5, adopted Dec. 1, 1959.

Annotations—AO 7-1; CAO's 76-8, 76-32, 76-36, 76-39, 76-43, 76-46, 76-50, 76-55, 77-1, 77-9, 77-14, 77-16, 77-19, 77-26, 77-33, 77-37, 77-40, 77-41, 77-44, 77-52, 77-53, 77-56, 77-63, 77-68, 78-2, 78-10, 78-11, 78-12, 78-17, 78-25, 78-33, 78-44, 78-47, 78-53, 78-54, 79-6, 79-7, 79-12, 79-16, 79-19, 79-32, 79-37, 80-3, 80-4, 80-11, 80-21, 80-24, 80-25, 80-28, 80-29, 81-4, 81-13, 81-18, 81-22, 81-31, 81-38, 82-1, 82-10, 82-13, 82-19, 82-24, 82-25, 82-28, 82-29, 83-2, 83-6, 83-11, 83-22, 85-8.

State Law reference— Code of ethics for public officers and employees, F.S. § 112.311 et seq.

Ofc. of Asst. Secy., Comm. Planning, Develop., HUD

§ 576.403

(2) The recipient or subrecipient is exempt from the requirement under paragraph (e)(1)(i) of this section if the Violence Against Women Act of 1994 (42 U.S.C. 13701 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.

§ 576.402 Terminating assistance.

(a) *In general.* If a program participant violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that recognizes the rights of individuals affected. The recipient or subrecipient must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

(b) *Program participants receiving rental assistance or housing relocation and stabilization services.* To terminate rental assistance or housing relocation and stabilization services to a program participant, the required formal process, at a minimum, must consist of:

(1) Written notice to the program participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the program participant.

(c) *Ability to provide further assistance.* Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same family or individual.

§ 576.403 Shelter and housing standards.

(a) *Lead-based paint remediation and disclosure.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C.

4851-4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

(b) *Minimum standards for emergency shelters.* Any building for which Emergency Solutions Grant (ESG) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety, sanitation, and privacy standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use Energy Star and WaterSense products and appliances.

(2) *Access.* The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and 28 CFR part 35; where applicable.

(3) *Space and security.* Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) *Interior air quality.* Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) *Water supply.* The shelter's water supply must be free of contamination.

(6) *Sanitary facilities.* Each program participant in the shelter must have

§576.404

24 CFR Ch. V (4-1-13 Edition)

access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) *Food preparation.* Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) *Sanitary conditions.* The shelter must be maintained in a sanitary condition.

(11) *Fire safety.* There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(c) *Minimum standards for permanent housing.* The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c). The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) *Space and security.* Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) *Interior air quality.* Each room or space must have a natural or mechanical means of ventilation. The interior

air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) *Water supply.* The water supply must be free from contamination.

(5) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) *Thermal environment.* The housing must have any necessary heating/cooling facilities in proper operating condition.

(7) *Illumination and electricity.* The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

(8) *Food preparation.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(9) *Sanitary conditions.* The housing must be maintained in a sanitary condition.

(10) *Fire safety.* (i) There must be a second means of exiting the building in the event of fire or other emergency.

(ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

§576.404 Conflicts of interest.

(a) *Organizational conflicts of interest.* The provision of any type or amount of

ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under § 576.401 or administer homelessness prevention assistance under § 576.103.

(b) *Individual conflicts of interest.* For the procurement of goods and services, the recipient and its subrecipients must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations). For all other transactions and activities, the following restrictions apply:

(1) *Conflicts prohibited.* No person described in paragraph (b)(2) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Persons covered.* The conflict-of-interest provisions of paragraph (b)(1) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients.

(3) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this subsection on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (b)(3)(ii) of this section, provided that the recipient has satisfactorily met the thresh-

old requirements of paragraph (b)(3)(i) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) If the recipient or subrecipient is a government, disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate state or local law.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (b)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the ESG program and the effective and efficient administration of the recipient's or subrecipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (b)(1) of this section;

(E) Whether undue hardship results to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and

(F) Any other relevant considerations.

(c) *Contractors.* All contractors of the recipient or subrecipient must comply with the same requirements that apply to subrecipients under this section.

§ 576.405

24 CFR Ch. V (4-1-13 Edition)

§ 576.405 Homeless participation.

(a) Unless the recipient is a State, the recipient must provide for the participation of not less than one homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG).

(b) If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG). The plan must be included in the annual action plan required under 24 CFR 91.220.

(c) To the maximum extent practicable, the recipient or subrecipient must involve homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

§ 576.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.

(c) Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(e) ESG funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Solutions ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(f) If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 576.407 Other Federal requirements.

(a) *General.* The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

(b) *Affirmative outreach.* The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a non-discriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

(c) *Uniform Administrative Requirements.* The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose

local government, except that 24 CFR 85.24 and 85.42 do not apply, and program income is to be used as match under 24 CFR 85.25(g). The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations, except that 24 CFR 84.23 and 84.53 do not apply, and program income is to be used as the nonfederal share under 24 CFR 84.24(b). These regulations include allowable costs and non-Federal audit requirements.

(d) *Environmental review responsibilities.* (1) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient shall supply all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50. The recipient also shall carry out mitigating measures required by HUD or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(2) The recipient or subrecipient, or any contractor of the recipient or subrecipient, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

(e) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5) do not apply to the ESG program.

(f) *Procurement of Recovered Materials.* The recipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the

§ 92.354

the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

[61 FR 48750, Sept. 16, 1996, as amended at 61 FR 51760, Oct. 3, 1996; 62 FR 28930, May 28, 1997; 67 FR 61756, Oct. 1, 2002]

§ 92.354 Labor.

(a) *General.* (1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs in § 92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

24 CFR Subtitle A (4-1-13 Edition)

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

(b) *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(c) *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

[64 FR 50224, Sept. 15, 1999]

§ 92.356 Conflict of interest.

(a) *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME

funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-in-

come persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) *Owners and Developers.* (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

§ 92.357

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997]

§ 92.357 Executive Order 12372.

(a) *General.* Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

§ 92.358 Consultant activities.

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Af-

24 CFR Subtitle A (4-1-13 Edition)

fairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

[62 FR 28930, May 28, 1997]

Subpart I—Technical Assistance

§ 92.400 Coordinated Federal support for housing strategies.

(a) *General.* HUD will provide assistance in accordance with Subtitle C of the Act.

(b) *Notice of funding.* HUD will publish a notice in the FEDERAL REGISTER announcing the availability of funding under this section as appropriate.

Subpart J—Reallocations

§ 92.450 General.

(a) This subpart J sets out the conditions under which HUD reallocates HOME funds that have been allocated, reserved, or placed in a HOME Investment Trust Fund.

(b) A jurisdiction that is not a participating jurisdiction but is meeting the requirements of §§ 92.102, 92.103, and 92.104, (participation threshold, notice of intent, and submission of consolidated plan) is treated as a participating jurisdiction for purposes of receiving a reallocation under subpart J of this part.

§ 92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.

(a) *Failure to be designated a participating jurisdiction.* HUD will reallocate, under this section, any HOME funds allocated to or reserved for a jurisdiction that is not a participating jurisdiction if:

(1) HUD determines that the jurisdiction has failed to:

(i) Meet the participation threshold amount in § 92.102;